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ABSTRACT OF THE

PROCEEDINGS

OF THE

COUNCIL OF THE GOVERNOR GENERAL OF INDIA,

ASSEMBLED FOR THE PURPOSE

OF MAKING

LAWS AND REGULATIONS.

1864.

WITH INDEX.

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TO THE

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Government of India Central Printing Office —No 534 L D —4 7 83 —50

Abstract of the Proceedings of the Council of the Governor General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., C. 67.

The Council met at Government House on Wednesday, the 3rd February 1864.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Honor the Lieutenant Governor of Bengal.
Major General the Hon'ble Sir R. Napier, K. C. B.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble Sir C. E. Trevelyan, K. C. B.
The Hon'ble W. Grey.
The Hon'ble A. A. Roberts, C. B.
The Hon'ble H. L. Anderson.
The Hon'ble C. H. Brown.
The Hon'ble J. N. Bullen.
The Hon'ble Maharaja Vezcaram Guzzeputty Raj Bahadoor, of Vizianagram.

The Hon'ble Mr. Bullen, took the oath of Allegiance, and the oath that he would faithfully discharge the duties of his Office.

The Hon'ble Maharaja of Vizianagram made a solemn declaration of Allegiance, and that he would faithfully fulfil the duties of his Office.

EMIGRATION (CONSOLIDATION) BILL.

The Hon'ble MR. MAINE, in moving that the Bill to consolidate and amend the laws relating to the emigration of Native laborers should be referred to a Select Committee and reported on in three weeks, said that this was one of the Bills which was introduced under the 19th Rule for the conduct of business, which rule empowered the Viceroy to give permission for a Bill to be brought in without the consent of the Council being first obtained. The rule was rather sharply criticised out of doors at the time of its promulgation, but Lord Elgin defended it, and experience had shown the advantages arising from it. It enabled the framer of a Bill to bring his measure before the public, not only much earlier than would otherwise be possible, but at a time when public attention was not distracted by a multiplicity of legislative business; and for his own part he (Mr. Maine) gladly testified to its wisdom, for he could not overrate the advantages of the criticism on the Bills bear-

ing his name, which had reached him not only from the Press, but also from numerous private persons. The subject of the Bill had been long under the consideration of the Government, and how urgently the consolidation of the Emigration Laws was needed would be seen by the Members of Council if they would look at the 2nd Section, which as the Bill stood was the repealing Section. They would find that the law relating to Native laborers had at present to be collected from 17 Acts, not to speak of Acts sanctioning French Treaties—which Acts the Council was not at liberty to repeal—and rules of general law which had an incidental bearing on the subject.

So far as the Bill was a consolidating Bill, there were only two points which the Council should be specially invited to notice. One was that the previous legislation on the subject had been frequently modified as it proceeded, and that the present Bill embodied the latest and most improved stage of legislation. The second was that the Bill contained much that, though not found in any Act, was still old law. Through the exercise of the power given to the Governor General in Council to regulate the subsidiary parts of the machinery of emigration, a code of rules had been formed with regard to the Protectors of Emigrants, which was as much permanent law as if it had proceeded from direct legislation, and these rules would be found in the Bill. Again, regarding the Bill as an amending Bill, there was no doubt that the law of India in relation to the emigration of Native laborers did require change, at least if he (Mr. Maine) might judge from the enormous mass of papers that had reached him when he first addressed himself to the subject—papers containing suggestions and complaints from the Secretary of State, from local Governments, from foreign Powers, and perhaps more than all from benevolent persons interested in the emigration of coolies. The Bill, founded on these communications, proposed a great variety of alterations in the existing law, but most of them were better fitted for discussion in Committee than in the full Council. However, there was one class of amendments to which he would invite attention, because the reforms which they carried with them amounted to a total change of system. Every one present had probably a general idea of the present mode of recruiting laborers in India for foreign parts—they were collected over large areas of the country by recruiters who were paid a percentage at the expense of the Colony or foreign Power seeking to enlarge its labor market. They were then brought in bodies or gangs to the port of embarkation, which was always a Presidency town, and then came into play an elaborate system of checks and precautions, designed—and often successfully designed—to make provision for the emigrant's proper treatment during the voyage, to ascertain his state of health, and to establish his full comprehension of the contract into which he had entered. The weak point of the system was the stage of recruiting at which the laborer came into contact with it. The coolie when he reached the sea-board was already committed—he was embarked

in the adventure—he had accomplished what was probably the most troublesome stage of the journey, and he was not likely to listen to advice or dissuasion at that time. It was moreover said that the Protector of Emigrants sometimes failed to make himself understood by the intending emigrants, swept together as they were from the multitudinous races of India, not so much from ignorance of their language as from ignorance of their habits; for he (Mr. Maine) had heard—though it was a point on which he could have no personal knowledge—that to make oneself comprehended by the ruder Natives of this country, it was sometimes quite as necessary to understand their usage of address as their tongue. At all events, it was obvious that the greater part of the complaints and suggestions which he had described applied to one or other of the consequences of this system. It was not easy to meet all the difficulties, but the task had been greatly facilitated by the preparation and enactment in the Council of his Hon'ble friend the Lieutenant Governor of a most carefully matured and thoroughly considered measure, relating to the recruitment of laborers for Assam and the tea districts. His (Mr. Maine's) Bill would follow closely the Bill of Bengal, with so much alteration as would effect its application to recruiting for foreign parts. The principle of it was simply the production by the recruiter of intending emigrants with as little delay as possible before the Magistrate of the district, who would interrogate them as to their comprehension of the engagement, and give them every information and advice. He imagined it might fairly be said that the Magistrate stood in a sort of patriarchal relation to the people. He would thoroughly understand their language and customs, and, more than most people, he would be able to detect false pretences on the part of the recruiter, and to discover whether any man intended to emigrate from a bad or an illegal motive, as for instance the desertion of his family. If it was clear that the laborer wished to emigrate, the Magistrate would register him, and permit his removal to the sea-board; if, after so thorough an enquiry, the laborer still retained his intention of going over-sea, he (Mr. Maine) conceived that no Government on earth had a right to prevent him. One advantage of the new plan was that it enabled him (Mr. Maine) greatly to simplify the machinery which was under the superintendence of the Protector of Emigrants at the Presidency Towns: for, the free will of the laborer having been placed beyond doubt up-country, all that remained was to ascertain the state of his health and to make provision for his comfort during his passage to his destination. These last-mentioned points were regulated by many Sections of the Bill. There was only one other amendment to which he would call the attention of the Council. Section V, after reciting the places to which emigration was now lawful, provided that the Governor General in Executive Council might declare to what other places it should be legalized. The present rule is that emigration is unlawful by Statute; but this prohibition is systematically relaxed when any Colony or dependency of a

foreign Power establishes that it has made proper arrangements for the reception of coolies. It was now proposed that when this Bill had once placed emigration on a satisfactory footing, the Governor General in Executive Council should decide to what new places it should be permitted. He (Mr. Maine,) admitted that words ought to be inserted in Committee throwing a positive legal obligation on the Executive Government to see that places seeking to obtain Indian laborers prepared for their safety and comfort by proper laws and arrangements, but with that exception he thought there were urgent reasons for leaving the Section in its present form. First, there were technical reasons. According to the practice of the British Parliament, whenever a number of laws were consolidated into a single Statute, they were always so consolidated as not to leave room for further legislation: any discretion as to carrying out or extending the Act was invariably confided to Her Majesty in Council, and never reserved to the legislature. The Committees of the Privy Council, and in particular that great Committee known as the Board of Trade, might be said to exist for the purpose of putting into execution the various important consolidation Acts which had been passed of late years, and of gradually bringing fresh cases within their sphere of operation. The reason he thought obvious: legislation was not a good in itself, it was only a good as leading up to good Executive Government, and it seemed to him a miscarriage of legislative art to frame a Statute purporting and pretending to contain the whole law, which should yet contain a provision for future legislation. After citing various Acts, Mr. Maine instanced 16 and 17 Vic., C. 107 (the Customs Consolidation Act), which he said, by Sections 324 and 325 empowered the Executive Government of England, on ascertaining certain facts as to the laws of foreign countries, to overturn, *pro tanto*, the very principle and basis of our commercial policy. This was an illustration something more than in point, because his (Mr. Maine's) provision only empowered the Executive Government of India to carry further, under restrictions, principles which the Indian legislature had sanctioned in twenty Statutes. But he should be sorry the Council should think he had merely technical reasons for framing the Section in this form. There were reasons of substance and most urgent reasons. The debate of last year on the St. Croix Bill showed that the whole Council was alive to one danger which threatened India. To the old and false belief that India was a country overflowing with wealth, had succeeded the new and equally false theory that it was a country teeming with men, and whenever benevolent Statesmen in Europe were shocked by a revival of Negro Slavery in any part of the world, it was obvious that their first thought was to replace the demand for Negroes by a draft on the population of this country. Now India lay outside the circle of European diplomacy, and let the Council suppose Her Majesty to be advised at some future time to agree to a Treaty containing laxer and looser stipulations than those of the Bill. It would become the duty of the Executive Government to submit a Bill carrying out the Treaty, to the

legislature—that was inevitable. What would that Council do? Insist on modifications of the Treaty? That was improbable. On the whole and in the long run, it would turn out to be under the influence of the same feelings which actuated the English Parliament, and produced in it so strong a repugnance to interfering with the personal acts of the Sovereign, that the instances where even Parliament had refused to carry out the obligations of a Treaty might almost be counted on one hand. He believed, therefore, that that Council would greatly strengthen the hands of the Executive if it enabled it to say to foreign Powers—"these are our conditions. If you wish to have Emigrants, you must have them on our terms. It is not a matter for legislation at all; this is the fixed law of India which is antecedent to, and presupposed in, every international engagement." He did not suppose that though the Sections which remained were doubtless susceptible of considerable improvement in Committee, any Member of the Council would entertain objections to them of principle. He thought that the Bill would be found to be a fair compromise between the opposing sets of considerations which must make themselves felt by everybody who addressed himself to the subject of emigration. On the one hand, he could not conceive that any body would deny the right—what some persons would call the natural right—of every Native of India to go where he pleased for the sake of bettering his condition. Even if he thought that proposition disputable, he considered that the English in India were estopped from denying it. That we, who were thousands of miles from our home, who had come over half the world to embark our fortunes in India, should proceed to deny to the Natives of India the right to go where they pleased to procure better remuneration for their labor, would be conduct which the world at large would regard, to put it gently, as the most extraordinary of English eccentricities. But on the other hand nobody would really wish that the Natives of India should emigrate in large numbers, though he might not feel himself at liberty to refuse them the liberty of emigrating. We know how ignorant and helpless they are—how readily they are deceived, and how easily oppressed. And we might not unnaturally suspect that those who were intended to be the successors of the Negroes might come in for more of the inheritance than was quite desirable. Moreover, we know that in the existing state of India, there is, or soon will be, room enough and work enough for every pair of arms which the country contains. If the Bill erred at all, it erred in giving effect to these last-mentioned views; it erred on the side of stringency; but on the whole, considering the character of the Natives of those parts of India which were the theatre of recruiting operations, he did not think that it unduly shackled their liberty of action.

The Motion was put and agreed to.

COURT OF SMALL CAUSES (KURRACHEE) BILL.

The Hon'ble Mr. Anderson, in moving for leave to introduce a Bill to give validity to certain proceedings of the Court of Small Causes of Kurrachee, said that the circumstances under which it became his duty to move for leave to introduce that Bill were as follows:—The Government of Bombay being fully satisfied with the success of the different Small Cause Courts established in that Presidency under Act XLII of 1860, resolved to establish a Court of the same description at Kurrachee in the Province of Sinde; they did accordingly establish a Court there in July 1861, but omitted to obtain the sanction of the Governor General of India in Council, which, according to the requisitions of the Act, they ought to have first obtained. This objection to the legality of the constitution of the Court was not discovered until after the Court had worked for some time. The Government of Bombay then applied to the Government of India for the required sanction to the constitution of the Court, and asked that the sanction might have a retrospective effect from the date on which the Court was first opened. The Government of India, however, while sanctioning the establishment of the Court, replied that no sanction given then could have a retrospective effect, and that a legislative enactment was necessary in order to give validity to the proceedings of the Court before the date of sanction. Under these circumstances, the present Bill had been prepared with the one object of giving validity to every thing done by the Court from the time it was established up to the date of the sanction of the Governor General of India in Council.

The Motion was put and agreed to.

CIVIL PROCEDURE (SINDE) BILL.

The Hon'ble Mr. Anderson, in moving for leave to introduce a Bill to give validity to the extension of the Code of Civil Procedure to the Province of Sinde from the 1st day of January 1862, said that in this case an error had been committed by the Government of Bombay, with reference to the extension of the Civil Procedure Code to Sinde, precisely similar to that which had been committed by it with reference to the Small Cause Court of Kurrachee. If no restriction or modification had been made in the extension of the Code, the Government of Bombay might itself have legally introduced it into Sinde. But the Government of Bombay introduced it as from the 1st of January 1862, subject to certain restrictions and modifications, and such an extension required, under the provisions of Section 39 of Act XXIII of 1861, the previous sanction of the Governor General in Council. The Governor General in Council having lately given the required sanction to the extension of the Code to Sinde, the present Bill had been prepared merely in order to declare that that sanction should have the same effect as if it had been given before the 1st of January 1862.

The Motion was put and agreed to.

HINDOO AND MAHOMEDAN LAW OFFICERS' BILL.

The Hon'ble MR. ROBERTS postponed the introduction of the Bill to repeal the laws relating to the Offices of Hindoo and Mahomedan Law Officers, and to the Offices of Cazee-ool-Cozaat and of Cazee, and to abolish the former offices.

FRENCH BANK BILL.

The Hon'ble MR. MAINE, in introducing the Bill to enable the "Comptoir D'Escompte of Paris" to sue and be sued in the name of the Chief Manager of the Indian Agencies of the said Company, and moving that it be referred to a Select Committee with instructions to report in three weeks, said that the Bill had been prepared in consequence of an application having been made to the Government of India for such an enactment as should give effect to a Treaty entered into between Her Majesty and the Emperor of the French, which contained the following Article: "1*st*.—The High contracting parties declare that they mutually grant to all Companies and other Associations, commercial, industrial, or financial, constituted and authorized in conformity with the laws in force in either of the two countries, the power of exercising all their rights, and of appearing before the Tribunals, whether for the purpose of bringing an action or for defending the same, throughout the dominions and possessions of the other Power, subject to the sole condition of conforming to the laws of such dominions and possessions." The introduction of the Bill had been somewhat postponed, in order that it might be seen whether any measure for a somewhat similar purpose would be introduced into the British Parliament, as such a measure if introduced there would have been useful as a guide for legislation here. Meanwhile the Comptoir D'Escompte had established branches in this country, and found it essential, in order to conduct their business properly, that they should have a right to sue and be sued in the name of their Manager. To this right they were clearly entitled under the Treaty, and the Bill now introduced gave it to them fully, providing that they should have some one person who should be the Chief Manager of all the Bank's Agencies in India, and who should sue and be sued in behalf of the Bank. For the protection of those who had dealings with the Comptoir D'Escompte, the Bill provided that the Manager should from time to time file memorials containing certain particulars. Since the Bill was published, a petition had been received from the Bank, stating that there was no Chief Manager of the Agencies in India, and praying that each local Agent might sue and be sued in respect of the transactions of or connected with that Agency. But there were many conveniences in the way of having one Chief Manager, who alone was to sue and be sued, and the difficulties created by the Government requiring that there should be such an Officer were scarcely more than nominal. Under the circumstances, it did not

appear too much to require that the Comptoir D'Escompte should appoint some one to be called Chief Manager of its Indian Agencies.

The Motion was put and agreed to.

POORWAH AND KHUDDEE BILL.

The Hon'ble MR. HARINGTON presented the Report of the Select Committee on the Bill to bring the Jagheers of Poorwah and Khuddee, in the District of Banda, under the operation of the General Regulations.

ADMINISTRATION OF JUSTICE AT ADEN.

The Hon'ble MR. ANDERSON presented the Report of the Select Committee on the Bill to provide for the administration of Civil and Criminal Justice at Aden.

WHIPPING BILL.

The Hon'ble MR. ROBERTS presented the Report of the Select Committee on the Bill to authorize the punishment of whipping in certain cases.

FOREIGNERS' BILL.

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill to give the Government certain powers with respect to Foreigners.

The following Select Committees were named :—

On the Bill to consolidate and amend the Laws relating to the Emigration of Native laborers—The Hon'ble Sir R. Napier, and the Hon'ble Messrs. Harington, Maine, Ellis, Roberts, Anderson, Brown, and Bullen.

On the Bill to enable the "Comptoir D'Escompte of Paris" to sue and be sued in the name of the Chief Manager of the Indian Agencies of the said Company—the Hon'ble Messrs. Maine, Harington, Ellis, Anderson, and Bullen.

The Council adjourned.

CALCUTTA :
The 3rd February 1864.

A. G. MACPHERSON,
Offg. Depy. Secy. to Govt. of India,
Home Dept.

Abstract of the Proceedings of the Council of the Governor General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., C. 67.

The Council met at Government House on Wednesday, the 10th February 1864.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Honor the Lieutenant Governor of Bengal.
Major General the Hon'ble Sir R. Napier, K. C. B.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble Sir C. E. Trevelyan, K. C. B.
The Hon'ble W. Grey.
The Hon'ble R. S. Ellis, C. B.
The Hon'ble A. A. Roberts, C. B.
His Highness Nawab Mahomed Yousuf Ali Khan Bahadoor, K. S. I., Nawab of Rampore.
The Hon'ble H. L. Anderson.
The Hon'ble C. H. Brown.
The Hon'ble J. N. Bullen.
The Hon'ble Maharaja Vezearam Guzzeputty Raj Bahadoor of Vizianagram.
The Hon'ble Rajah Sahib Dyal Bahadoor.

His Highness the Nawab of Rampore and the Hon'ble Rajah Sahib Dyal Bahadoor made a solemn declaration of Allegiance to Her Majesty, and that they would faithfully fulfil the duties of their Office.

TOLLS BILL.

The Hon'ble MR. MAINE, in moving for leave to introduce a Bill to amend Act VIII of 1851 (for enabling Government to levy tolls on Public Roads and Bridges), said that the Bill was one which involved no question of principle; not even raising the question whether it was desirable to levy such tolls at all. For while its object was to amend the Schedule of Act VIII of 1851, that Act was otherwise left untouched. The Schedule to Act VIII of 1851 had been proved by experience to be insufficient and in some respects bad. Some of its provisions, indeed, had manifestly been taken just as they stood from English Turnpike Acts without much reference to their applicability to this country. The Government of the North-Western Provinces objected to some of the details of the amended Schedule, and had

suggested improvements in them; while the Government of Bengal approved of the Bill in its present form. If he got leave to introduce a Bill, and it were referred to a Select Committee, these differences of opinion would be considered, and it would be seen to what extent the amended Schedule required alteration.

The Motion was put and agreed to.

HINDOO AND MAHOMEDAN LAW OFFICERS BILL.

The Hon'ble Mr. Roberts introduced the Bill to repeal the laws relating to the Officers of Hindoo and Mahomedan Law Officers, and to the Offices of Cazee-ool-Cozaat and of Cazee, and to abolish the former Offices, and moved that it be referred to a Select Committee, with instructions to report in four weeks. He said that when he obtained leave to introduce the Bill, he had stated the objects of it so fully that it was unnecessary for him now to enter at length into them. He might however repeat that such great changes had lately been introduced into the Criminal Law by the passing of the Indian Penal Code, that the Services of Mahomedan Law Officers were no longer necessary. Again, as regards Civil Justice, during the seventy years that the Officers of the British Government had taken part in the administration of Civil Justice, access had been obtained by means of translations and otherwise to all the principal Law Books, and a body of precedents, to be found in the decisions of the Courts, had grown up. The Judges were therefore now qualified to dispose of questions of Hindoo and Mahomedan Law themselves, and it was proposed that henceforth the Courts should expound the law for themselves. The Bill would also enable the Government to dissever itself from all connection with the Office of Cazee, which was an Office arising out of the constitution of Mahomedan Society. When the British Rule commenced in India, it was deemed expedient to utilize the Cazees who were found already established, and consequently laws were passed, investing them with certain public functions in addition to their private duties. Latterly, however, Cazees had ceased to do anything whatever for the State, but they continued nevertheless to be appointed and paid by the State. At the same time there were many self-appointed Cazees who never had any connection with Government, and who exercised their calling among such of their countrymen as chose to employ them. Under the Bill now introduced, the Government would appoint no more Cazees, but would leave all candidates for the Office to be selected by the persons who employed and paid them. He was authorized to state that the claims of all Law Officers and Cazees on account of any pecuniary or other allowance of which they were in receipt from Government in virtue of their Offices would be separately and liberally considered.

His Highness the Nawab of Rampore said that the Bill contained two distinct propositions: it proposed 1*st*, to abolish the Offices of Cazee-ool-Cozaat and Hindoo Law Officer—and 2*nd*, to dissever the connection of Government with Town and Pergunna Cazees. To the first he saw no objection. But in regard to the second, he would observe that the appointment of Cazee was primarily instituted for the general welfare of the people, and to prevent disputes regarding the reality or otherwise of marriages, the amount of marriage portions, and questions of succession and inheritance, and it was evident that the absence of all registry would not only give rise to such disputes, but would cause the Courts to be flooded with suits regarding them, and would thus protract litigation, and uselessly take up the time of the Judges. He would therefore propose that, as was now (some few Towns excepted) the practice, Government should not remunerate Cazees who performed their duties in virtue of the authority granted to them by Government, but that on the other hand Government should not dissever its connection with the Cazees, but should frame rules for them, and for their control, as in the case of Pleaders and Ameens. Their duties would consist in registering every marriage, and forwarding monthly copies thereof to the District Court. From this, the following advantages would be derived:—1*st*, that the Zillah Authorities could, if necessary, refer any question of law to competent Cazees so appointed,—2*nd*, when the intention of Government to keep up their appointments was generally known, education would be stimulated by a desire to obtain them—3*rd*, the inconvenience attending a search for a Cazee for the celebration of marriage ceremonies and the like, and the possibility of not finding one, which would probably follow their non-appointment by Government, would be obviated. The people of their own free-will paid the Cazees certain sums for the performance of the marriage ceremony, and these would still be the remuneration of the Cazees. Besides, the Government had acknowledged the advisability of registering the marriages of Mahomedans in the registers of Cazees by instituting a system of registry for the marriages of Christians: it was also clear that the interference of Government with respect to Cazees could only be productive of good, and would prevent disputes and litigation.

The Hon'ble Mr. Roberts said he regretted that His Highness had not been present when he (Mr. Roberts) had moved for leave to introduce the Bill, for if he had been present, he would have seen from his (Mr. Roberts') remarks, that no intention whatever was entertained to interfere with the duties of Cazees as Cazees. There were already thousands of Cazees who were self-constituted, and were elected by the people who employed them without the intervention of Government, and who never had any connection with it. The object of the Bill was merely to enable Government to withdraw from the exercise of the privilege of appointing Cazees. But the Bill would

not interfere with the duties usually performed by Cazees which did not depend upon any enactment of the British Legislature.

The Motion was put and agreed to.

PORT DUES (AMHERST) BILL.

The Hon'ble Mr. Maine introduced the Bill to repeal Act VIII of 1861 (for the levy of Port dues in the Port of Amherst), and in moving that it be referred to a Select Committee, with instructions to report in three weeks said, that Act VIII of 1861 had not proved beneficial to the Port of Amherst or to the neighbouring Ports, and there seemed to be an unanimous local opinion that it ought to be repealed.

The Motion was put and agreed to.

COURT OF SMALL CAUSES (KURRACHEE) BILL.

The Hon'ble Mr. Anderson introduced the Bill to give validity to certain proceedings of the Court of Small Causes of Kurrachee, and moved that it be referred to a Select Committee, with instructions to report in one week.

The Motion was put and agreed to.

CIVIL PROCEDURE (SINDE) BILL.

The Hon'ble Mr. Anderson also introduced the Bill to give validity to the extension of Code of Civil Procedure to the Province of Sinde from the 1st day of January 1862, and moved that it be referred to a Select Committee, with instructions to report in one week.

The Motion was put and agreed to.

POORWA AND KHUDDEE BILL.

The Hon'ble Mr. Harington moved that the Report of the Select Committee on the Bill to bring the Jagheers of Poorwah and Khuddee, in the District of Banda, under the operation of the General Regulations be taken into consideration.

The Motion was put and agreed to.

The Hon'ble Mr. Harington also moved that the Bill be passed.

The Motion was put and agreed to.

ADMINISTRATION OF JUSTICE AT ADEN.

The Hon'ble MR. ANDERSON moved that the Report of the Select Committee on the Bill to provide for the Administration of Civil and Criminal Justice at Aden be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. ANDERSON also moved that the Bill be passed with the amendments recommended by the Select Committee.

The Motion was put and agreed to.

WHIPPING BILL.

The Hon'ble MR. ROBERTS postponed his motion that the Report of the Select Committee on the Bill to authorize the punishment of whipping in certain cases be taken into consideration, and that the Bill be passed with the amendments recommended by the Select Committee. He said he found that the Report of the Select Committee had been in the hands of Members barely the shortest time required by the Rules for the conduct of business: moreover, since coming into the Council-room, a petition had been put into his hands containing objections to the passing of the Bill in its present shape. Under these circumstances he would ask permission to postpone his Motion for one week.

FOREIGNERS' BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill to give the Government certain powers with respect to Foreigners be taken into consideration. He remarked that the Select Committee had made no alteration whatever in the principle of the Bill, but had done a good deal to add to the clearness and intelligibility of its expressions.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill be passed with the amendments recommended by the Select Committee.

The Motion was put and agreed to.

The following Select Committee were named:—

On the Bill to repeal the laws relating to the Offices of Hindoo and Mahomedan Law Officers, and to the Offices of Cazee-ool Cozaat and of Cazee, and to abolish the former Offices—The Hon'ble Messrs. Harington, Maine, Ellis, and Roberts, His Highness the Nawab of Rampore, and Mr. Anderson.

On the Bill to repeal Act VIII of 1861 (for the levy of Port dues in the Port of Amherst)—The Hon'ble Messrs Harington, Maine, and Bullen.

On the Bill to give validity to certain proceedings of the Court of Small Causes of Kurrachee—The Hon'ble Messrs. Harington, Maine, and Anderson.

On the Bill to give validity to the extension of the Code of Civil Procedure to the Province of Sinde from the 1st of January 1862—The Hon'ble Messrs. Harington, Maine, and Anderson.

The Council adjourned.

CALCUTTA,
The 10th February 1864.

A. G. MACPHERSON,
Offg. Dep. Secy. to Govt. of India, Home Dept.

Govt Central Press.—No 213 L. D.—25 11-61 —30

Abstract of the proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Wednesday, the 17th February 1864.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Honor the Lieutenant Governor of Bengal.
Major General the Hon'ble Sir R. Napier, K. C. B.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble Sir C. E. Trevelyan, K. C. B.
The Hon'ble W. Grey.
The Hon'ble A. A. Roberts, C. B.
His Highness Nawab Mahomed Yousuf Ali Khan Bahádur, K. S. I. Nawab of Rampore.
The Hon'ble H. L. Anderson.
The Hon'ble C. H. Brown.
The Hon'ble J. N. Bullen.
The Hon'ble Maháráj á Vezearám Guzzeputty Ráj Bahádur of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.

BURMAH CUSTOMS' BILL.

The Hon'ble MR. MAINE in moving for leave to introduce a Bill to give further effect to the provisions of Act IV of 1863 (to give effect to certain provisions of a Treaty between His Excellency the Earl of Elgin and Kincardine, Viceroy and Governor-General of India, and His Majesty the King of Burmah,) said that this Bill was in fact, as was stated in its title, a Bill to give effect to certain provisions of Act IV of 1863. At the express request of the Foreign Department, Act IV of 1863 was so framed as to follow the terms of the Burmese Treaty as nearly as possible, it being supposed that any departure from the language of the Treaty would be likely to excite suspicion in the mind of the King of Burmah. One of the Articles of the Treaty stipulated, that goods imported into British Burmah merely for export into the Burmese Territory should be subject to only a small and almost nominal Customs' duty: but further rules were necessary to ensure that goods declared to be for export to the Burmese Territories should be really so

exported, and to protect that revenue against the mal-practices of certain persons who declared goods to be for transit to the Burmese Territory, when they really intended to smuggle them into British Burmah. It being somewhat difficult in any legislative measure to lay down the necessary rules, the Bill which he proposed to introduce would leave it to the Governor-General in Council from time to time to make such rules as were required, provided those rules were not inconsistent with Act IV of 1863, and provided the penalties prescribed were similar to the penalties which could be imposed under the consolidated Customs' Act.

The Motion was put and agreed to.

TOLLS' BILL.

The Hon'ble Mr. Maine introduced the Bill to amend Act VIII of 1851 (for enabling Government to levy tolls on Public Roads and Bridges), and, in moving that it be referred to a Select Committee, with instructions to report in three weeks, said that the only part of the old law which this Bill touched was the Schedule, the details of which could best be settled in Select Committee.

The Hon'ble Raja Sahib Dyal Bahadur said that, with reference to the Bill, he would ask in what places or at what distances was the toll to be leviable? Would tolls be levied on Railroads or on Boats? if not, goods travelling by the roads would be the only ones which would have to bear this charge. The result would be that whereas the goods brought by rail and boat would be sold at a remunerative price, those brought by the road, being only sold at the same price, would entail a loss on the seller.

The Hon'ble Mr. Maine said, that the last speaker overlooked the fact that this Bill touched on no matter of principle. No doubt the question as to whether there ought or ought not to be any tolls at all, was one on which much might be said. But that was a question which was not raised in this Bill, which merely amended a Schedule which worked oppressively.

The Motion was put and agreed to.

ALIMENTARY SALT (CENTRAL PROVINCES) BILL.

The Hon'ble Mr. Harington presented the Report of the Select Committee on the Bill for regulating the importation and manufacture of Alimentary Salt in the Territories administered by the Chief Commissioner of the Central Provinces.

COURT OF SMALL CAUSES (KURRACHEE) BILL.

The Hon'ble Mr. Anderson presented the Report of the Select Committee on the Bill to give validity to certain proceedings of the Court of Small Causes of Kurrachee, and having applied to the President that the Rules for the Conduct of Business should be suspended,

The President declared the Rules to be suspended.

The Hon'ble Mr. Anderson then moved that the Bill be taken into consideration.

The Motion was put and agreed to.

The Hon'ble Mr. Anderson then moved that the Bill be passed.

The Motion was put and agreed to.

CIVIL PROCEDURE (SINDE) BILL.

The Hon'ble Mr. Anderson also presented the Report of the Select Committee on the Bill to give validity to the extension of the Code of Civil Procedure to the Province of Sinde from the 1st day of January 1862, and having applied to the President that the Rules for the Conduct of Business should be suspended,

The President declared the Rules suspended.

The Hon'ble Mr. Anderson then moved that the Report be taken into consideration.

The Motion was put and agreed to.

The Hon'ble Mr. Anderson then moved that the Bill be passed.

The Motion was put and agreed to.

WHIPPING BILL.

The Hon'ble Mr. Roberts moved that the Report of the Select Committee on the Bill to authorize the punishment of whipping in certain cases be taken into consideration.

The Motion was put and agreed to.

The Hon'ble Mr. Roberts, in moving that the Bill be passed with the amendments recommended by the Select Committee, said that he had a few observations to make relating to the history of this measure. Corporal punishment was one of the authorized modes of punishment in our administration of criminal justice from the earliest time through-

out the British Territories in India, and continued in force in the Madras and Bombay Presidencies without interruption until 1st January 1862. In Bengal, corporal punishment was abolished by Lord William Bentinck in the year 1834, but the same Regulation, II of 1834, which abolished corporal punishment pointed out the necessity for the introduction of a better system of prison discipline, and contained a provision to enable the Governor-General to take steps for introducing a system of discipline into the goals "calculated both to reform the convicts and to render their imprisonment efficacious, as an example to deter others from the commission of crime." With this view a Committee of Prison Discipline was appointed on the 2nd January 1836, and their enquiries extended over a period of two years. The able Report of the Committee, of which his Hon'ble friend who was charged with the supervision of the finances of this country was a member, should be carefully studied by all who took an interest in the management of Jails in India. Many important reforms and improvements were recommended, and some of them were carried out: but that the objects contemplated by Lord William Bentinck when he abolished corporal punishment were not attained, was clear from the preamble of Act III of 1844, which set forth that adequate improvements had not been effected in prison discipline, and that it was therefore expedient to substitute corporal punishment for certain offences. Accordingly corporal punishment was again authorized in the Bengal Presidency by Act III of 1844 : it was from time to time introduced into all the territories subsequenly acquired by the British Crown, and it continued to be administered throughout British India until the 1st of January 1862, when the Penal Code came into operation. That Code did not include flogging in the list of punishments The Code was completed and laid before the Governor-General on the 14th October 1837, but it did not pass into law until 25 years later. The Code was commenced in the year 1835 if not earlier, and it would be recollected that corporal punishment had been abolished in Bengal in the year 1834. It was not therefore surprising to find the following opinion expressed by the Law Commission on the Chapter of Punishments :—

> We have not thought it desirable to place flogging in the list of punishments. * * * Being satisfied, therefore, that the punishment of flogging can be proper only in a few cases, and not being satisfied that it is necessary in any, we are unwilling to advise the Government to retrace its steps, and to re-establish throughout the British territories a practice which, by a policy unquestionably humane and by no means proved to have been injurious, has recently been abolished, through a large part of those territories

And so it happened that corporal punishment was excluded from the Penal Code.

The Code remained in abeyance for upwards of 20 years. It came under the consideration of the late Legislative Council in 1855, and a Select Committee was appointed to consider and revise it. The Select Commitee, among other alterations and modifications, were of opinion that flogging should be among the punishments authorized by the Code, and placed it on the list, but when the Code came under the consideration of a Committee of the whole Council, it was thought that as the published draft contained no such punishment as flogging, it was desirable that local Officers and the public should have an opportunity of expressing their opinions on the subject, and that the passing of the Code should not be delayed on that account. A Select Committee was at the same time appointed to report on the punishment of flogging, and to prepare such a Bill as they might consider necessary. This was in 1860. A Bill was accordingly prepared, published, and discussed, and was passed by the Council on 7th September 1861. It was taken to the Governor-General, but failed to obtain the assent of the Viceroy. He would, with the permission of His Excellency the President, read the reasons assigned by the late Lord Canning as reported in the Abstract Proceedings of the Council for 5th February 1862, for withholding his assent to the Bill—

His Excellency the President stated that he wished to advert to the reasons why the Bill passed by the Legislative Council had not received his assent. As that Council had not met again for the transaction of business, he had not had an opportunity of communicating his sentiments. He had no doubt on the point of principle, but there were serious defects in the details of the measure. The definition as to age was very vague and not sufficient as a guide to the Courts. There appeared to be too much detail, and that not of a very judicious character, as to the mode of inflicting the punishment. Security was wanting for a safe and judicious Medical supervision, and there was an absence of a provision, so desirable in all such cases, for the exercise, at any rate to some extent, of the discretion of the local Government. The present Bill, he believed, would be found to be a considerable improvement on the former.

The latter portion of the remarks of Lord Canning related to a new Bill which his friend the Lieutenant Governor of Bengal, who was then a Member of the Supreme Government, had framed so soon as he became aware of the objections of the Governor General. This Bill which was the same in a modified form that was now under the consideration of the Council, was introduced on the 26th February 1862, and had consequently been two years before the Council and before the public. The Council ceased to sit for legislative purposes in April 1862, before the Bill could pass through all the necessary stages, and when the Council met again in the following November, the Government of India thought it desirable to call upon all the local Governments to report what had been the effect of the abolition of corporal punishment under the Penal Code, and also requested an expression of opinion as confirmed or modified by the experience of the year 1862, regarding the expediency of retaining flogging as a punishment. From the reports furnished by the Governments of Bengal, Madras, the

North-Western Provinces, Oude, and the Central Provinces, it would appear that during the year 1862, about 18,000 persons were sentenced to imprisonment in those territories alone, for offences which were formerly punishable by flogging. Probably 3 to 4,000 more persons were punished under similar circumstances in Bombay and Burmah, which would give a total of more than 20,000 persons who were committed to Jail for various terms during the year 1862 for offences formerly punishable by flogging. Of course it was not to be supposed that all these persons would have been flogged had that mode of punishment been retained. It was only permissive under the old law—not obligatory. But judging from the number who were subjected to corporal punishment in the previous year in those Provinces from which there were Returns on the subject, he had no hesitation in saying that at least 10,000 offenders were committed to Jail for various terms of imprisonment in 1862, who before the passing of the Penal Code would have been punished with stripes and released. That was one effect of the abolition of corporal punishment. The Jails in India which had always been overcrowded and contained insufficient accommodation even under the old law, had to take in 10,000 additional prisoners during the year 1862. The additional cost to the State could not have been less than 2 lakhs of Rupees. Each prisoner cost the Government on an average more than Rs. 40 per annum; but in estimating an increased cost of 2 lakhs for the year 1862, he had allowed an average sentence of only 6 months for the additional 10,000 prisoners. If the average sentence was longer, the additional cost would have been so much more in proportion. Of course this increased expenditure was not worthy of a moment's consideration if the main objects of punishment, the repression of crime and the reformation of criminals, were obtained thereby. But this was the point at issue. The advocates of corporal punishment maintained that for certain offences corporal punishment was a better preventive of crime than imprisonment in our Jails, that it was less demoralizing to the individual, and more humane to himself and to his family. As to the expediency of retaining flogging as a punishment, the Governors of Madras and Bombay, the Lieutenant Governors of Bengal, the N. W. Provinces, and the Punjab, and the Chief Commissioner of the Central Provinces had all expressed a strong opinion regarding the necessity of the measure. Fortified by these opinions—by the opinion of the late Legislative Council and of the late Lord Canning—and deeply impressed with the necessity in the present state of society in this country, and the defective system of discipline in our Jails—the Select Committee had addressed themselves to the introduction of such modifications and restrictions as would, they hoped, disarm objection and prevent the possibility of abuse. He begged to point out that the punishment was not obligatory, but was permissive only. The Bill would not allow whipping to be inflicted in addition to any other punishment unless the offender had previously been convicted of the same offence as that for which the whipping was awarded. It was proposed that

whipping should be lawful in lieu of any other punishment in cases of theft, extortion by threat, and a few other offences of which it seemed more particularly likely to be an effectual preventive: and in the case of frontier or wild districts specially brought by Government under the more stringent provisions of the Act, a still wider range of offences were made punishable with whipping in lieu of any other punishment. As regarded juvenile offenders, it was highly desirable that it should in all cases, except when the offence was one which was punishable with death, be lawful to award whipping as the punishment in lieu of any other punishment which might be prescribed for the offence, and a provision to that effect was accordingly introduced into the Bill. It was left to the local Governments to determine the particular mode, within the limits prescribed in the Act, in which the whipping was to be inflicted.

The Hon'ble SIR CHARLES TREVELYAN said that it was very important that the Council should approach the consideration of this matter, duly appreciating the gravity of the issue before it; and he thought he could not do better than commence the observations he had to make by reading the declaration of principle contained in the preamble of Regulation II of 1834, the Act passed by Lord William Bentinck for the abolition of flogging. The preamble was as follows:—

Whereas corporal punishment has not been found efficacious for the prevention of crime either by reformation or by example; and whereas it is always degrading to the individual, and by affixing marks of infamy, which often are for ever indelible, prevents his return to an honest course of life; and whereas there is every reason to fear that it is in many cases injudiciously and unnecessarily inflicted, becoming a grievous and irremediable wrong; and whereas it is becoming and expedient that the British Government, as the paramount power in India, should present in its own system the principles of the most enlightened legislation, and should endeavour, by its example, to encourage the Native States to exchange their barbarous and cruel punishments of maiming, of torture, of loss of limb, for those of a more merciful and wise character, by which the individual may be reformed and the community saved from these brutalizing exhibitions; and whereas it has been deemed expedient to authorize the substitution of a fine in lieu of labor, in certain minor offences, for which the Criminal Courts are empowered by existing Regulations to pass sentence of imprisonment with labor, either with or without irons and whereas it has been deemed necessary to provide for the gradual introduction of a better system of prison discipline, the following rules have been enacted, to be in force from the date of their promulgation throughout the Territories subject to the Presidency of Fort William.

After corporal punishment had remained abolished from 1834 to 1837, the Indian Law Commission pronounced the following opinion:—

We have not thought it desirable to place flogging in the list of punishments. If inflicted for atrocious crimes with a severity proportioned to the magnitude of those crimes, that punishment is open to the very serious objections which may be urged against all cruel punishments, and which are so well known that it is unnecessary for us to recapitulate them. When inflicted on men of mature age, particularly if they be of decent stations in life, it is a punishment of

which the severity consists, to a great extent, in the disgrace which it causes; and to that extent, the arguments which we have used against public exposure apply to flogging * * * * The moderate flogging of young offenders for some petty offences is not open, at least in any serious degree, to the objections which we have stated. Flogging does not inflict on a boy that sort of ignominy which it causes to a grown man. Up to a certain age boys, even of the higher classes, are often corrected with stripes by their parents and guardians; and this circumstance takes away a considerable part of the disgrace of stripes inflicted on a boy by order of a Magistrate. In countries where a bad system of prison discipline exists, the punishment of flogging has in such cases one great advantage over that of imprisonment. The young offender is not exposed even for a day to the contaminating influence of an ill-regulated gaol. It is our hope and belief, however, that the reforms which are now under consideration will prevent the gaols of India from exercising any such contaminating influence; and, if that should be the case, we are inclined to think that the effect of a few days passed in solitude or in hard and monotonous labor would be more salutary than that of stripes. Being satisfied, therefore, that the punishment of flogging can be proper only in a few cases, and not being satisfied that it is necessary in any, we are unwilling to advise the Government to retrace its steps, and to re-establish throughout the British territories a practice which, by a policy unquestionably humane and by no means proved to have been injudicious, has recently been abolished through a large part of those territories.

and it was to be observed that this opinion was given by the Commissioners after a long experience of the existence of flogging and after four years' experience of the effects of its abolition.

Combined with the abolition of flogging was Lord William Bentinck's plan of improving the Jails and reforming Jail discipline, and a Committee was appointed to report upon the subject. It might be said that these views on the part of the Government of the time were merely speculative benevolence, which had become obsolete. But he hoped to prove that the principle involved was sound, and founded deep in human nature, and was at least as applicable to India as elsewhere. It was true that Lord William Bentinck was a real friend to this country, and did so much to place the Government on sound principles of justice and public good, that he might be said almost to have been a second founder of our Empire here. Lord William Bentinck considered the abolition of flogging to be as important to the progress of this country as the abolition of Suttee, the improvement of Education, or the free settlement of Europeans in India. Of the Law Commissioners he would only say that they combined high judicial attainments with thorough practical knowledge; and that they were assisted by the Chief Justice, Sir E. Ryan, and by Sir B. Malkin, a Puisne Judge of the Supreme Court, both eminent men and well fitted to advise on such a subject.

The course of the question since 1837 had been alluded to by Mr. Roberts, but perhaps not sufficiently elucidated. In 1844, an Act was passed restoring corporal punishment to some extent. It authorized the infliction of

not more than 30 stripes of a rattan in cases of petty theft, and the reason for the passing of the Act appeared from its preamble, which declared it to be "expedient, until adequate improvements in prison discipline can be effected, to substitute corporal punishment for imprisonment in the case of certain offences." After that came the mutiny, when prisons were broken open and destroyed. The limitations which had been placed on the infliction of corporal punishment were suspended, and it was frequently resorted to. Shortly after, corporal punishment found a place in the draft of the Penal Code; but again it was excluded. Then came the Flogging Bill prepared by a Select Committee of the Legislative Council, brought in by Mr. Harington, and subsequently passed by the Council. Lord Canning, however, refused his assent to it. Finally came Mr. Beadon's Bill—the Bill now under consideration. So that the matter stood thus: corporal punishment was originally excluded from the Penal Code; but since that time there had been a see-saw legislation on the subject adapted to the circumstances of the times. Corporal punishment had been at one time partially restored as a provisional measure. But what it was now proposed to do was a very different matter, for it was proposed to restore corporal punishment, not as a provisional, but as a general permanent arrangement, and as a punishment for almost every species of offence, from petty theft to robbery and rape. This was a great change indeed, and the issue now to be decided was whether corporal punishment ought permanently and finally to be adopted into our legal system.

He (Sir Charles Trevelyan) contended that it ought not. His first objection to flogging was that while all punishments were more or less unequal, corporal punishment was much more so than any other. The instrument to be used presented one great difficulty. In the Bill brought into the Legislative Council, it was provided that the rattan alone should be the instrument employed: but then it was urged strongly that the rattan was a dangerous instrument,—that (as it was said) it descended like a bullet; and Sir Charles Jackson mentioned several cases which had come out in the course of an enquiry instituted by order of Lord Dalhousie in which the use of the rattan had inflicted serious and lasting injury. The Bill subsequently introduced prescribed the use of the cat-of-nine-tails. But suppose the punishment to be with the cat-of-nine-tails, how unequal the punishment must be! An inexperienced operator, for example, might allow the tails to get entangled, so that they in fact together inflicted only one blow, while a man who understood the use of the instrument, and drew his fingers through the tails between each stroke, would give a distinct blow with each tail. So again there was inequality arising from the part of the body on which it was to be inflicted, some preferring the back, while others preferred another part of the person as less likely to inflict irremediable injury: and the Chief Justice proposed that a light cloth should be drawn over this part of the body when the punishment was inflicted. Under the present Bill, there must necessarily be the

greatest amount of inequality ; for the Bill did not even lay down the instrument to be used, but left that matter to the discretion of the local Governments, of whom, of course, one would take one view, and another another--one would be severe, and another would be lenient—one would follow one medical opinion, and another would follow another. The title of the Bill had been altered from the "Flogging" Bill, as the Bill introduced into the Legislative Council was called, to the "Whipping" Bill, which was the title of the present measure. He must say he thought that to call this the Whipping Bill was quite inconsistent with the provisions it contained ; for there really was no limit to the severity of the flogging that might be inflicted under it. It was always better to call things by their proper names, and this was a Flogging Bill.

Another great difficulty in the way of using flogging as a punishment was this—that however much the Bill might provide that a European Officer should be present during the infliction of the punishment, he did not believe that practically such an Officer would usually be present. Our Judges would not readily submit to be turned into executioners: such scenes were so painful that no English gentleman would be present at them, who could possibly avoid it, and, the superintendence of the infliction of the punishment would be left to irresponsible Natives. In the case of soldiers flogged in obedience to the order of a Court Martial, abuse was prevented by the presence of a body of comrades jealously watching the whole proceedings ; but if flogging were allowed to be ordered by Junior Magistrates, and the inflicting it were left to be superintended by Natives, very painful scenes would constantly be enacted in the interior of Jails. It was but lately that torture was eradicated from Southern India ; but if this Bill passed, it would establish and legalize torture throughout India. He had said he doubted whether European Officers would really in person superintend floggings. He would add that he believed, supposing they did attend them, the scene would so affect them that they would become leniently disposed, and that the actual punishment inflicted would be but slight. He would read the remarks upon this point of Mr. Campbell, contained in a report dated the 30th March 1860, written by him when Judicial Commissioner of Oudh—

"That the great criminal question is thus solved, that we have found the *panacea* for all our difficulties, is one of those rough and extreme ideas, engendered by the mutiny, of which we must now rid ourselves. In saying this, I am by no means setting myself against the practice prescribed by Government; for I believe that Government never intended that it should be carried to an extreme. Not only is it unfair and undesirable to inflict a degrading punishment for offences which are not always accompanied by moral turpitude, and for which it has not been prescribed by law, but it becomes every day clearer that for serious crimes of turpitude, such corporal punishment as we can inflict very frequently proves a wholly insufficient penalty; that it is uncertain, unequal, and precarious in its operation, and that there is a tendency among Officers to avoid its infliction to the extent which would make it effectual, and to allow our practice to degenerate into too great leniency. Officers have been warned

against this, and it is true that what is part of their duty they must perform without shrinking from it. But still I think that, as was said by one of the Deputy Commissioners (Captain Thompson), in a large proportion of thefts and such crimes, flogging alone cannot be effectual unless it is carried to the point of brutality. It can only be effectually administered with certainty and safety under the immediate and close personal superintendence of the European Officers, and I think that we must not too much turn our Judges into executioners. I look on this, in fact, as one of the principal difficulties of the system. The constant participation in such scenes must have more or less a brutalizing effect on almost any man's mind, and must tend to perpetuate that harsh and severe feeling which, not unnaturally resulting from the scenes of 1857, it must now be our object to soften down and eradicate."

He might enlarge on the inequality of flogging as a punishment. Flogging to a weak person was a very different thing from flogging to a strong person: and a flogging from the hand of a strong executioner was a very different thing from a flogging from the hand of a weak executioner. A flogging depended much on the physique both of the flogger and of the person flogged, and upon the disposition of the flogger, and also of the presiding Magistrate. The Bill, it was true, attempted to provide against some of these inequalities by directing that, when possible, a Medical Officer should be present. He feared, however, that precaution would prove insufficient. The moral inequality of flogging as a punishment was perhaps even greater than its physical inequality. To a man of position and character, it was worse than death. To a bad and hardened man, it might be almost nothing. To Europeans it must always be a most severe and degrading punishment. And here he would remark that while Europeans in England were not liable to flogging, they would under this Act be liable to that punishment in this country on the order even of a Junior Magistrate. At a time when it was desired to encourage the settlement of Europeans in this country, it might be doubted whether it was wise to render them liable to flogging. He could think of nothing that was more likely to deter settlers.

He further objected to flogging, inasmuch as it was a punishment which had a brutalizing effect on the criminal. It hardened and rendered insensible to shame those who were not before hardened in crime. A petty theft, for instance, might be committed by a person of any class. Under other circumstances, the offender might repent of what he had done, and attain a respectable position in society; but if he were once flogged, he would be likely to become a shameless and hardened criminal. The punishment was demoralizing to those who superintended its infliction. All of us have a bad as well as a good spirit in us, and we should take care lest the bad spirit prevail. We know what we are, but we know not what we may be. Even a father correcting his son might commence well, but as he proceeded, he might, from a spirit of resistance on the part of the son, lose his temper and be guilty of great abuse of authority.

Flogging would have an injurious influence upon the whole country. As a punishment, it had always been an emblem of a low state of civilization. There was the Russian knout, the American cowhide, and the korah or heavy horsewhip in this country, which the old French traveller Bernier two centuries ago was shocked to find it was the custom to hang over the gateway of every person in authority except when it was in actual use. He would ask when flogging had free scope in England? The Irish Rebellion was the last occasion on which it had been used to any extent, and its abuse then gave rise to great scandals. Since that time its use had gradually dwindled away. Its restoration as regards attempts on the person of the Queen, and the destruction of works of Art was often referred to. So also was the fact of its having been recently, in a fit of popular panic, re-enacted in the case of garrotting. He believed, however, he was correct in saying that in no single case had the punishment been inflicted under any of these restorations, and that in England, although it was occasionally talked of, flogging never was practised now. It was kept as an extraordinary weapon hung on the wall *in terrorem*, but not to be taken down. It was a coarse expedient of disturbed times and barbarous countries; and without any disrespect for the administration of the Punjab, of which he had a high opinion, it must be said that the pressure on the Council in respect of this Bill did not come from any of the old Provinces, but from the new or so-called Non-Regulation Provinces. How truly the term Non-Regulation was applied to them might be judged from the fact that among the papers connected with the Bill, he found a *demi-official* order from the Judicial Commissioner of the Punjab to his subordinates, directing them not to cease from flogging, although the punishment was no longer legal under the Penal Code.

Our mission in India was one of civilization, and our object should be by our example to raise the standard and to bring the Natives up to our level.

His last reason for opposing the Bill was, that it was not necessary. It seemed to be taken as an axiom that flogging was a punishment suited to, and necessary in the case of, wild tribes. That this was so, he wholly denied. Cleveland, Outram, and Dixon would have repudiated such help in civilizing the Bhaugulpore Hill tribes, The Bheels and Mhairs. The instruments used by them are described on Cleveland's tomb at Bhaugulpore—

Who without bloodshed or the terrors of authority,
Employing only the means of Conciliation, Confidence, and Benevolence,
Attempted and Accomplished
The entire subjection of the Lawless and Savage inhabitants of the Jungleterry of Rajmehal,
Who had long infested the Neighbouring Lands by their Predatory Incursions,
Inspired them with a Taste for the Arts of Civilized Life,
And attached them to the British Government by a Conquest over their minds,
The most permanent, as the most rational, mode of dominion.

He would refer to some of the reports which had been received—especially those for the North West Provinces, Oudh, Bengal, and Burmah, from all of which it appeared that the class of offences which would be liable to flogging under this Bill had not increased since the introduction of the Penal Code The Chief Commissioner of British Burmah wrote thus —

With respect to the first point, it does not appear that the suspension of corporal punishment has, during the year 1862, had any sensible effect on the numbers sentenced to imprisonment or convicted of theft In other words, the punishment of flogging cannot be considered as having a marked deterring effect against crime upon the Burmese and other tribes of the Indo Chinese family Indeed, I have no doubt but that confinement in a jail and the restraints of strict discipline are held very much more in dread by those races than bodily pain to be endured for a short time

The Chief Commissioner of Oudh said—

The Chief Commissioner quite agrees with the Judicial Commissioner in thinking that a sufficient time has not elapsed, since the introduction of the Penal Code, to enable him to judge of the effect of the suspension of corporal punishment, and, therefore, he would beg to be allowed to defer giving a decided opinion on the question of retaining flogging as a punishment, and of the offences for which it should be made applicable till the experience of another year has been gained The greatest diversity of opinion on the efficacy of corporal punishment prevails among the Officers employed in the administration of justice The Chief Commissioner's impression is that the thieving population of town and country, the low Mahomedans of Lucknow, and the Passees of the Province, care nothing for the lash, while it is dreaded by the better born and nurtured class of offenders But the Chief Commissioner waits for the further evidence that the criminal statistics of another year will afford before coming to definite conclusions on the question On one point, however, he is not likely to alter his opinion, and that is, that the infliction of corporal punishment should be superintended by other than the Judicial Officers, whose position is lowered by the performance of such a duty In large Stations the punishment might be administered under the supervision of a Provost Sergeant or some agency of that kind

The Judicial Commissioner of Oudh had written in the following terms

It will be seen that during 1862, there has been a large decrease in the number of convictions for offences punishable by stripes as compared with 1861 I find, too, that there has been a considerable decrease in the number of juvenile offenders sentenced during the present year, the number being —

1861		306
1862	... . ..	245
	Difference	61

This would seem to dispose of the question as far as it is connected with the anticipated overcrowding of the jails in consequence of the abolition of corporal punishment

There can be no doubt, however, that the offences against property, which were formerly punishable by the lash, are on the increase. Nevertheless, as I have already said, I would prefer to await the result of the present year before re-introducing that punishment. I do not believe that the increase is owing, in any marked degree if at all, to its abolition, for the simple reason that I think it would take at least a year to apprise the criminal classes generally that it had been abolished, and to convince them that they need no longer abstain from crime from terror of the lash.

So the Register of the Sudder Court at Agra reported :—

From an examination of these it appears, that while it is generally agreed that as yet there is no perceptible increase or otherwise in the classes of offences for which under the old Law flogging was permitted, a very large majority of the Officers consulted are strongly in favor of the retention of flogging as a punishment in the case of juvenile offenders.

He would next read an extract from a letter written by the Judges of the High Court at Calcutta :—

The Court are of opinion that the reports received from the various local authorities and the experience of the past year afford no sufficient data for the formation of any opinion by this Court, as to the working of the Penal Code in reference to the suspension of corporal punishment, and to the particular class of offences affected by that change. They are decidedly of opinion, that no necessity has been shown to exist for reverting to that mode of punishment in the case of *adult* criminals; but that, on the other hand, a perseverance for four or five years at least from the time of the passing of the Penal Code, in the experiment now under trial, of carrying on the administration of Criminal Justice without a resort to flogging, is highly expedient. * * * * * The Court would not pretermit this opportunity of urging on the local Government the necessity of making yet further improvements in prison discipline and of speedily establishing juvenile reformatories, in order that, on the one hand, the arguments for reverting to it in the case of adults may be deprived of all force, and on the other hand the use of corporal punishment for young persons may be soon dispensed with.

And the Lieutenant Governor agreed with the Court in thinking that no sufficient data existed for forming any opinion as to the working of the Ponal Code in reference to the suspension of corporal punishment, and to the particular class of offences affected by the change.

It appearod from the Madras Returns that the number of offences which might formerly have been punished with flogging had increased since the Penal Code came into force. But this might be accounted for in two ways,—the increased stringency of the Code, and the establishment of the new Police. One reason why when at Madras he (Sir Charles Trevelyan) had done his utmost to establish the new Police, was that he knew that the great majority of the offences committed were never traced out, or taken any notice of: he knew that many districts were thinly inhabited and comparatively unproductive, in consequence of the badness of the old Police and the insecurity of property. Now

however, crimes were much more efficiently hunted up: to borrow an expression from the Finance Department, he might say that now all crime was really brought to charge.

Lastly, he objected to the passing of the Whipping Bill, because it was unnecessary, inasmuch as there was an alternative measure to which recourse might be had. The original scheme for the abolition of flogging included a plan for the reform of Jail discipline. But that plan, although it might not have been abandoned, had never been carried out; and very much remained to be done before it could be said that the state of the Jails or of Jail discipline in India was such as it ought to be. At home it was a subject in which the public took the utmost interest, and he doubted not that the same result would be attained here if attention were directed to it. One of the strongest objections to this Flogging Bill was that, by substituting a coarse, easy expedient founded on physical force, it would indefinitely postpone the adoption of better means. Mr Roberts had put the expense of an improved system of prison discipline at four lakhs a year. But if a proper system of Jail discipline were established, including juvenile reformatories, 40 lakhs would be well spent. To improve the morality of a country was to improve its financial condition. In proportion as we could do without Magistrates, Police, and Soldiers, in proportion as we could humanize and raise the moral standard of the people,—in that proportion would the resources of the country be developed and its financial position improved.

The Hon'ble Mr. Maine agreed with his Hon'ble friend that there were some grave objections to the punishment of flogging, although he (Mr. Maine) was unfortunate in not being able to appreciate the precise objections which Sir Charles Trevelyan had pressed on the Council. One defect which he (Mr. Maine) perceived, had not been mentioned by his Hon'ble friend, viz, that flogging was incapable of remission. Once administered, it could not be taken back, whatever light further enquiry might cast on the convict's guilt. Mr. Maine also acknowledged that there was great force in Sir Charles Trevelyan's remarks on the practical inequality of the punishment. But after all drawbacks had been brought into the account, he could not agree in his Hon'ble friend's conclusion. First, among such of Sir Charles Trevelyan's objections as he did not concur in, he would take one which was put forward rather modestly, but of which everybody must see the point. His Hon'ble friend had suggested that under the Bill a Junior Magistrate in the Mofussil might order a European to be flogged. That was a mistake. The Bill took away no privilege which Europeans at present possessed. European criminals would still be brought down to the Presidency Towns, and, if the High Court or a Calcutta Magistrate ordered a European who had been guilty of any of the offences mentioned in the Bill to be flogged, there was not the smallest reason for thinking that the European community would object. As to Sir Charles Trevelyan's assertion that flogging bruta-

lized the criminal, he (Mr. Maine) had heard it so many times not only from his Hon'ble friend but from many other persons for whom he had the greatest respect, that he must suppose there was something in it, but for his part he must acknowledge that he did not even understand what it meant. What was intended when it was said that whipping brutalized? Was it, that it appealed to the offender's animal nature, as distinguished from his moral nature? that it caused, in short, physical pain? Why, every punishment deserving the name inflicted physical pain. If you shut a man up in Jail, who was used to the open air; if you deprived him of stimulants when he was habituated to them; if you made him work when he was accustomed to be idle; in all these cases you inflicted physical pain, and pain sometimes even severer than the pain of a flogging. Some persons, including apparently his Hon'ble friend, but certainly the authors of a petition which had been circulated, appeared to forget that, when you sentenced a criminal to punishment, you deliberately made up your mind to render him extremely uncomfortable: and for his part, Mr. Maine could not the least understand why one form or degree of physical pain should brutalize more than another. His Hon'ble friend further condemned flogging as a disgraceful punishment. He (Mr. Maine) was afraid he should shock his Hon'ble friend, but he was bound to say that, considering the present state of the theory of punishment, it was to some extent a recommendation of any punishment that it was disgraceful. For (as he supposed) there occured in India the same perplexity which occurred in England—and which had gone far to disturb what were once believed to be the first principles of a penal system—that criminals were found by experience not to commit crimes singly and by isolated acts; they had a tendency to form themselves into a class, with rules and maxims and a code of honor of their own. The very difficulty was that ordinary punishments were not felt by them to be disgraceful, and if therefore a punishment could be discovered which roused under all circumstances the sense of shame, that punishment would have a value of its own. After all deductions had been made from the penal efficacy of flogging, there still remained one immense advantage, that it was the most strongly deterrent of known punishments—so deterrent indeed, that the legislator was under a constant temptation to employ it without regard to counterbalancing disadvantages. His Hon'ble friend had strangely argued that the English examples of Whipping Acts were not in point, because no flogging had been administered under them. The truth was, that the terror of the law had done its work thoroughly; offenders were deterred and offences ceased. He (Mr. Maine) would never advocate the infliction of whipping except sparingly and under careful restrictions; but what he did not comprehend was that this Council should oppose itself to the unanimous demand of the local Governments. Such a refusal could only be based, as his Hon'ble friend's argument showed, on certain abstract and speculative theories concerning punishment, and it was only fair to see what results those theories had given so far as they had hitherto been permitted to govern

practice. His Hon'ble friend had pressed the Council with the authority of Lord William Bentinck, Lord Macaulay, and Mr Anderson Those were great names, but there was an authority greater than the authority of names, and that was the authority of facts. Now the fact was, that what he trusted he might call without offence the sentimental theory of punishment had all but collapsed ; if it had not utterly broken down, it had at all events been rudely shaken. The theory began (not long before the time when the Law Commissioners reported) in a natural re-action against the savage punishments employed at the beginning of the century, and it was founded on the assumption (which was only very partially true) that all punishment should be directed towards the reformation of the offender. If ever a theory had been thoroughly tested, it was this theory during its trial in England. It was impossible to say what sums had not been lavished in England on the construction of Jails on ideal principles, and on an internal discipline adjusted to some theory. Perhaps his Hon'ble friend scarcely reflected what he was promising when he promised that Indian Jails should be improved up to the English standard and reformatories established throughout the country. The outlay in England on Jails, Jail discipline, and reformatories was little known, because the money came out of local taxation, and did not appear in the public accounts ; but he believed that the sums expended, had been almost fabulous. What was the result ? Twenty or thirty years of costly experiments had simply brought out the fact, that by looking too exclusively to the reformatory side of punishment, you had not only not reformed your criminals, but had actually increased the criminal class. It was practically found that, by taking all the sting out of punishment, by leaving the criminal nothing but the recollection of a rather dull and monotonous episode in his life, you had increased the offender's temptations without improving his morality : you were actually adding to that community within the community which lived by crime. The truth which no candid man who had English experience to guide him would deny was that, by adjusting jail discipline to one special principle, you had certainly not reformed your criminals, and probably had encouraged them And if that were so in England, where you had men of the same race and nominally of the same faith as yourselves to operate upon, what certain results could you expect in India, where a wholly different set of usages and rules concerning the conduct of life prevailed from those which obtained at home ? The great agent of reformatory discipline in English Jails was the Chaplain But what counterpart had the Chaplain in an Indian Jail ? He doubted whether his Hon'ble friend had followed the most recent current of English opinion on these subjects. If any of the Council had read the Reports of the Committees appointed last year by the two Houses of Parliament, and the discussions among the County Magistrates which had arrived by the last mail as to the proper mode of carrying out the recommendations of the Committees, they would see that the formula which, after recent experience, commanded most respect in England, was one which might well serve as the motto of that Bill—"Punish-

first; reform and instruct afterwards." It would be found that the Committee of the House of Lords on Prison Discipline had advised a liberal resort to the crank, the tread-mill, and something called the shot-drill, and he (Mr. Maine) perceived that in several Counties a contrivance which was in special favor was a species of plank-bed, of which, if he understood it rightly, the peculiar ingenuity consisted in its rendering it extremely difficult for the convict to sleep. He confessed that the impression left on his mind by the Parliamentary Reports and County discussions was that these noble Lords and honorable Gentlemen would have felt it a great relief if the authority of such great names as had been quoted to-day, had not prevented them from having recourse to the simpler and in his (Mr. Maine's) eyes much more innocent and less cruel expedient of a sound flogging. He submitted to the Council that the case was this—all theories on the subject of punishment had more or less broken down, not finally he hoped, but for the present. We were again at sea as to first principles. Nothing then remained but to take experience for a guide, and here was every local Government in India, every Government entrusted with the direct administration of the country, declaring that it could not keep the peace and tread down crime, unless it were allowed to employ the punishment of whipping. The duty of making laws in one Council for all India was onerous enough, but if they, sitting in one corner of the country, were deliberately to say to these Governments that criminals were not to be flogged because flogging might brutalize a Bengalee thief or a Punjabee dacoit, he must say that they would not only incur a very grave responsibility, but be going very close to the verge of absurdity. And if it were once granted that whipping, though it should be sparingly employed and carefully guarded, should nevertheless not be altogether excluded from the list of punishments, a more innocent Bill than this could scarcely be conceived. Whipping was only for a first offence to be given in substitution for other punishments: the Judge at his discretion might order the convict to be whipped and released, thus saving him from the contamination of a Jail—contamination which existed not only here, but also in the most elaborately organized of English Jails. If the offender were convicted of a second offence, then as, on a fair assumption, he might be supposed to belong to the criminal class, so that nothing was gained by saving him from the corruption of imprisonment, then he might for certain offences be flogged as well as imprisoned or otherwise punished. It appeared impossible, considering the weight legitimately due to the opinions of the local Governments, that the Council should reject so mild a measure of concession to their demand.

The Hon'ble Mr. Harington said he had had such frequent occasion, in his capacity of a Member of the Indian Legislature, to speak on the subject of the Bill then under consideration, that he had exhausted all that he had to say in respect of the Bill. He had remarked upon more than one of

the occasions referred to, and he would repeat the remark now, that he was in favor of the Indian Penal Code being supplemented by the present Bill, as the select Committee had advised that it should be altered, not because he liked the punishment of flogging which the Bill proposed to authorize the Criminal Courts to administer in certain cases—for, in reality, he disliked the punishment—but because in the present condition of Indian society (he, of course, meant that portion of Indian society which, in the event of the Bill becoming law, would be most affected by its provisions), and in the existing state of the Jails in this country, he was of opinion that corporal punishment must be regarded not only as a necessary ingredient in, or part of the Penal Code, but absolutely, in a large portion of the cases in which supposing the Bill to pass it was likely to be inflicted, as a more humane and a more merciful punishment than imprisonment for a long period in a Criminal Jail. So far as the dread of punishment operated upon the Native mind to deter from the commission of crime, which was the primary object to be aimed at in every system of punishment, he believed that corporal punishment was more effectual than imprisonment, and looking to the contamination which was inseparable from imprisonment in a Criminal Jail in this country, he also believed it was not more demoralizing or, indeed, so demoralizing. He had listened attentively to the objections which had been urged against the Bill with so much ability and feeling by Sir Charles Trevelyan, and he fully appreciated the motives which had actuated Sir Charles Trevelyan's opposition to the Bill. He would not occupy the time of the Council by considering in detail the arguments advanced by Sir Charles Trevelyan against the Bill. Were he to do so, he could only, as regarded the principle of Sir Charles Trevelyan's objections, go over the same ground which Mr. Maine had gone over and repeat much of what Mr. Maine had said so well, and he should therefore content himself with stating his intention to vote for the motion before the Council.

The Hon'ble the RAJA OF VIZIANAGRAM said that he thought flogging a proper and lawful punishment where crimes had in fact been committed. But among all classes of people false cases were frequently got up in this country, and proved by false evidence. The Magistrate might do his best, and yet by the evidence brought before him, he might consider himself bound to convict and to punish with flogging. In such a case, the person wrongly flogged would be injured and disgraced for life. He should like to see something in the nature of a safeguard against such cases as these.

The Hon'ble SIR R. NAPIER admitted that there was much force in what Sir Charles Trevelyan had said, but he could not agree with him that flogging, as a substitute for imprisonment, was an inhuman punishment for the class of people who were likely to be subjected to it. He thought imprisonment

more demoralizing and permanently injurious; for it was most probable that a man who went into prison simply a knave, would come out a finished ruffian; that his family might be destitute during his imprisonment; and that if he had had any caste, he would leave the Jail an out-cast. In the old Legislative Council he had expressed his opinion in favor of the Flogging Bill. and he had not changed in the slightest degree the opinions he had expressed on any subject discussed in that Council. He was in favor of the principle of the Bill, but with the permission of the President, he would propose an amendment of the details, at the proper time.

The Hon'ble the Lieutenant Governor said that he would only offer a few remarks with reference to one point which had been alluded to by Sir Charles Trevelyan, and that was as to the reply of the High Court of Bengal, that the reports of the local authorities and the experience of the past year afforded no sufficient data for the formation of an opinion on the effect of the suspension of corporal punishment since the passing of the Penal Code. In this respect he entirely agreed with the Court. The Reports of the local authorities merely showed that a certain number of persons had been convicted of certain crimes the year before the Code came into force, and that there was no increase in the number convicted of the same crimes in the subsequent year. But the reports did not show how the change had operated in increasing the number of persons sent to gaol, and that information he was now in some degree enabled to supply from the Report of the Inspector General of Jails for 1862. From this it appeared that while the number of persons sent to gaol in 1861 was 48,626, in 1862 it was 58,135, being an increase of nearly 10,000 prisoners, or 20 per cent. in a single year. He did not mean to say that this increase was entirely owing to the abolition of corporal punishment, but he had no doubt that a considerable proportion of it was due to that cause. The High Court had urged upon the Government the necessity for making yet further improvement in Jail discipline: but this, in the present state of things, was impossible. All the Jails in Bengal were overcrowded The mortality had in some places alarmingly increased, and he had been obliged in some cases to relax the salutary rule which restricts prisoners to intramural labor. Except in the Alipore and perhaps one or. two other Jails, any serious attempt at the classification of prisoners was out of the question, the numbers in Jail being far beyond the space required for health, much more for the due separation of prisoners. No doubt a remedy for this lay in enlarging the present Jails and building new ones, but where was the money to come from? Sir Charles Trevelyan had said that he would give 40 lakhs rather than that offenders should be punished with whipping: but in fact if it were proposed to spend a quarter of that sum on the Jails in Bengal,—and certainly less would not suffice to accommodate properly even the existing number

of prisoners,—the money would not be forthcoming. There had recently been before him estimates for very needful improvements in Jails, which he could not include in the Budget, because the allotment for public works was not sufficient to cover them : and if this were the case with comparatively trifling sums of a few thousand Rupees, what would it be if lakhs were in question. For this reason alone, apart from all others, he should support the Bill.

The Hon'ble RA'JA' SA'HIB DYAL BA'HA'DUR said that juvenile offenders were under Section V of this Bill rendered liable to the punishment of whipping. This, he thought, was an error. In his opinion the imprisonment authorized by the Penal Code was a far preferable mode of punishment, because,- 1st, the bodies of juveniles were tender, and their bones and limbs had not attained their full development, consequently the infliction of whipping might be attended with the permanent injury : 2nd, as juveniles sinned either from ignorance or the evil persuasion of others, flogging was a punishment out of all proportion to the offence. It must also be borne in mind that juveniles, while undergoing imprisonment under the Penal Code, would while in Jail have their education attended to, and be thereby probably reclaimed from their evil courses. Again, under Section IX, a term of only 15 days was allowed for the presentation of an appeal. This term appeared to him totally insufficient for the purpose, because the culprit from whom the appeal should come being in prison, his relations (supposing them to be able and willing to do so) would have to appeal on his behalf, and the 15 days would elapse ere they could hear of his imprisonment, obtain a copy of the sentence, and forward that and all other papers to the Appellate Court. He would therefore propose that in lieu of that Section, another should be substituted, declaring that the punishment of whipping should be only inflicted on the expiry of the term of the imprisonment awarded.

The Hon'ble Mr. ROBERTS in reply said that after what had been said, he had only a few observations to offer. As to the apprehension expressed by Sir Charles Trevelyan that the passing of this Bill might lead to the re-establishment of torture which had only been recently trodden out by us ; that the superior Officers would evade the provision which required them to superintend the infliction of the punishment ; that it would be left to irresponsible parties under whom great abuses might take place, he (Mr. Roberts) left bound to say that in his experience of upwards of 25 years, no such abuse had occurred under the old law—that a similar provision existed under it, and had never been evaded by the European Officers. He thought too that the extract from the letter of the Judicial Commissioner of Oudh which had been read by Sir Charles Trevelyan confirmed this view. Mr. Campbell considered that there was a tendency to too great leniency on the part of our Officers. But it appeard to him (Mr. Roberts) that Sir Charles Trevelyan had avoided the main point at issue. It was admitted that Lord William Bentinck

had abolished corporal punishment under a sort of pledge to introduce a system of better prison discipline. Had that pledge been redeemed? The Committee of Prison Discipline had recommended many reforms and improvements, some of which had been carried out, but in his (Mr. Roberts') opinion the system of Prison Discipline was exceedingly bad. The Inspectors of Jails and Officers in charge of Jails did what they could, with the means at their disposal, to keep the Jails clean and healthy and to maintain a certain discipline. Still the Jails were in a most unsatisfactory state. They were overcrowded, and the mortality was very great. He (Mr. Roberts) had not taken charge of this Bill, or presumed to lay it before Council without seriously considering whether corporal punishment was necessary. He himself would prefer imprisonment under an improved system of Jail discipline, but he was constrained to say that in the present state of affairs, corporal punishment was more humane than imprisonment. From the returns before him, he found that, in the year 1862-63, as many as 4,700 prisoners died in our Jails in India. He did not include the prisoners sentenced to transportation in the Andaman Islands, but here, on the Continent of India, 80 or 90, or even 100, out of every 1,000 prisoners died every year in our Jails. And what did our Jails consist of. Each Jail contained three, four, or more Barracks, in each of which from 50 to 80 or 100 prisoners slept at night. They were not actually huddled together, for each man had a certain space allotted to him. In the day time they all worked together in large yards. Here were all the evils of association and contamination, and our prisoners came out worse charactors than when they went into Jail. If either the English or the Irish system of Jail discipline could be introduced, he (Mr. Roberts) would be glad to see corporal punishment abolished. He did not agree with Mr. Maine that the experiments which had been made in Jail management at home had not been successful. From all the reports and returns which he had seen, he thought that a decided impression was being made upon crime and the criminal population. But the cost was enormous. There were in England 116 County and Borough Jails and Houses of Correction, which cost the country close upon half a million sterling per annum. Then there were 12 Convict Prisons which cost another quarter of a million sterling per annum. Besides these, there were Reformatories and Industrial Schools, costing many thousand pounds per annum more. Thus England and Wales had more Jails, and spent annually at least three quarters of a million sterling upon Jails for 20 millions of people, while in India, for 140 millions of people, we had not Jails enough, and spent only about 30 lakhs per annum on them. If Sir Charles Trevelyan would devote more funds to the improvement of our Jails and of Jail discipline, he (Mr. Roberts) would be glad to see the abolition of corporal punishment.

The Hon'ble SIR ROBERT NAPIER moved the amendment of which he had given notice,—that in Section X, line 11, "50" should be substituted for "150." He considered that the Bill went too far in allowing so many as 150 lashes. No doubt the instrument with which the punishment was inflicted by the authorities who advocated that number was a mild one. But any over-zeal on the part of authorities removed from supervision might increase the severity of the instrument, and this might render 150 lashes a very excessive punishment. He thought it much better to fix the number at 50 lashes, leaving the Executive Government to determine the description of the cat of nine tails to be used,—since 50 lashes were capable of being made a sufficient punishment, but could hardly be made excessive, whilst he thought 150 lashes opened a very wide range for the exercise of over-severity. He should tremble to think of 150 lashes with a severe instrument, and thought the limit should certainly be reduced.

The Hon'ble MR. ROBERTS explained that, the rattan being the more severe instrument, the number of stripes had been fixed so as to equalize the punishment in each case as far as possible. When the cat of nine tails was introduced into the Madras Presidency as an instrument of punishment, it had been calculated that five lashes of the cat were equal to one stroke of the rattan; and that calculation had been adopted in this Bill. This provision in the Bill was in accordance with the practice in the Madras Presidency.

The Hon'ble Mr. MAINE said that if the proportion between the degree of punishment inflicted by the two instruments was lost sight of, the danger was that resort would be had to whichever species of punishment was the more severe; he would rather retain the numbers as they stood.

The Hon'ble MR. HARINGTON entirely concurred in what had fallen from the Hon'ble Mr Maine.

The amendment proposed by the Hon'ble Sir R. Napier was put and negatived.

The original Motion that the Bill be passed with the amendments recommended by the Select Committee, was then put and agreed to.

The following Select Committee was named :—

On the Bill to amend Act VIII of 1851 (for enabling Government to levy tolls on Public Roads and Bridges)—the Hon'ble Messrs. Harington, Maine, Ellis, Roberts and Anderson, and the Hon'ble Rájá Sáhib Dyál.

The Council adjourned.

CALCUTTA,
The 17th February 1864.

A. G. MACPHERSON,
Offg. Depy. Secy. to the Govt of India,
Home Dept.

Abstract of the Proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., C. 67.

The Council met at Government House on Wednesday, the 24th February 1864.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding*.
His Honor the Lieutenant-Governor of Bengal.
Major-General the Hon'ble Sir R. Napier, K. C. B.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble R. S. Ellis, C. B.
The Hon'ble A. A. Roberts, C. B.
The Hon'ble H. L. Anderson.
The Hon'ble J. N. Bullen.
The Hon'ble Maharaja Vezearam Guzzeputty Raj Bahadoor of Vizianagram.
The Hon'ble Rajah Sahib Dyal Bahadoor.

BURMAH CUSTOMS BILL.

The Hon'ble MR. MAINE introduced the Bill to give further effect to the provisions of Act IV of 1863 (to give effect to certain provisions of a treaty between His Excellency the Earl of Elgin and Kincardine, Viceroy and Governor-General of India, and His Majesty the King of Burmah), and moved that it be referred to a Select Committee, with instructions to report in two weeks.

The Motion was put and agreed to.

OFFICIAL TRUSTEE BILL.

The Hon'ble MR. MAINE also introduced the Bill to constitute an office of Official Trustee, and moved that it be referred to a Select Committee, with instructions to report in three weeks. He said the Bill was one of those which had been published under the 19th of the Council Rules, by order of the late Lord Elgin. It was a measure introduced principally for the relief of a large class who suffered much from the existing state of the law, although they had not much opportunity of complaining of it—*viz.*, women and minors. The inconveniences to which he alluded were felt much in England, but they made themselves

still more felt in India, owing to the condition of Indian society. Trusts of private property might be said to have two objects—the first was to ensure the safety of the Trust Funds, the second was to ensure the regular payment of the annual income derived from those funds. It was impossible to over-estimate the hardships which were suffered even in England in consequence of breaks occurring in the Trusteeship—breaks arising from the death of Trustees, their leaving England, their becoming lunatics, or generally from the Trustees becoming incapable or unwilling to act in the trusts for the management of which they had been appointed. All the ingenuity of the framers of English trust-deeds had been used to make provision against these contingencies, and several Acts of Parliament had also been passed to remove the difficulties of most usual occurrence. The expedient had sometimes suggested itself to people in England of appointing a Trustee with perpetual succession—a public functionary with an office under him, the trusts descending from one officer to his successor in the office. Such a functionary, however, had never been appointed; partly on account of the dislike of the English nation to the multiplication of public offices, and partly on account of the existence of the Court of Chancery, which was supposed to have the general care of the interests of persons interested in Trust Funds. Joint Stock Companies too had been launched more than once, whose business it should be to undertake Trusts, but such schemes had always broken down through the operation of the principle of English law, which would in no case allow a Trustee to receive for his services any remuneration beyond his costs out of pocket. The theory of the English law seemed to be that a man is remunerated for becoming a Trustee, not by a payment in money, but by the claim he creates on his friends and fellow citizens to undertake trusts for his benefit in return. But here in India European society was so unstable and changing, that there was but little probability of deriving reciprocal advantages from serving as Trustee, while stability and regularity, the primary objects of a trust, were constantly sacrificed by the departures of Trustees to Europe. On the whole he thought that a sufficient case was made out both for having a public office of Trustee in India, and also for departing from the principle of non-remuneration. An Official Trustee had in fact been already appointed, and the principle of the Bill now introduced had been already recognized in Act XVII of 1843, which enabled the Supreme Court to vest Trust Funds in one of its own Officers who was to be remunerated by a percentage. That Act, however, was very brief. It did not create an office of Official Trustee, and it applied only to the case of a trust once established, and likely to fail from the Trustee having departed from the jurisdiction of the Court. It moreover did not provide sufficiently for the security of the Trust Funds; and in Madras a sad case of defalcation of an Official Trustee had recently occurred. In framing the present Bill, he (Mr. Maine) had followed somewhat the Administrator General's Act. Since the Bill was published, the opinions of

several of the local Governments and of the High Courts had been taken: those opinions were very generally favorable, but there was a difference of opinion as to the rate of remuneration proper for the Official Trustee. When preparing the Bill, he had consulted various mercantile men, solicitors, and other persons likely to be best informed on the subject; and from what he learnt from them, he had thought that the remuneration provided for in the Bill would be sufficient. That was a fit subject for discussion in Committee, and he doubted not that if those Members of the Council who were best acquainted with commercial matters would allow themselves to be put upon the Select Committee, a satisfactory solution of the question would be arrived at.

The Motion was put and agreed to.

ACT XXI OF 1856 EXTENSION BILL.

The Hon'ble Mr. Harington moved for leave to introduce a Bill to extend Act XXI of 1856 (to consolidate and amend the law relating to the Abkaree Revenue in the Presidency of Fort William in Bengal). He said that the necessity for the Bill arose out of the state of the law in the Central Provinces, or rather from the want of law in those Provinces to regulate the proceedings of the local Officers in respect of the matters to which the Bill related. Since the Central Provinces came under British rule, the spirit of the Abkaree Laws in force in the Presidency of Bengal had, he believed, been generally observed in them, though, as regarded some parts of the Provinces, it was doubtful whether what had been done in this respect rested on any legal foundation. It was not proposed to confine the operation of the Bill to the Central Provinces. It was possible that there were other parts of the country under the immediate administration of the Governor-General of India in Council in which there might be the same absence of any specific law in respect to the Abkaree Department as had been found to be the case in the Central Provinces. In order therefore to obviate the necessity of future legislation in respect to any such place, the Bill gave the Governor-General of India in Council a general power to extend the provisions of Act XXI of 1856 to any province or place under the immediate administration of the Government of India in which the Act was not now in force: a section was added which provided that, when so extended, the Governor-General should declare the authorities by whom the Act should be administered in such province or place. This Section was rendered necessary by the different character of the Executive or Government agency employed in the Central Provinces and other Non-Regulation Territories and the Presidency of Bengal for which Act XXI of 1856 was framed.

The Motion was put and agreed to.

MILITARY CANTONMENTS BILL.

The Hon'ble Mr. Maine introduced the Bill to regulate the administration of Civil and Criminal Justice, and the superintendence of Police and conservancy

within the limits of Military Cantonments, and in moving that it be referred to a Select Committee with instructions to report in three weeks, said that this Bill originated in a legal difficulty. A Cantonment Joint Magistrate was a Joint Magistrate whose jurisdiction was localized in a Cantonment, but he was ordinarily a Commissioned Officer, and hence it was argued that the office was illegally constituted, as being one of those which could only be filled by a Member of the Civil Service. He would not enter into that question, which the Bill would conclusively settle, but would only say that the early history of the office of Joint Magistrate was exceedingly obscure, and that though an office might be irregularly filled, it by no means followed, as a necessary legal consequence, that it was illegally constituted. Under the present Bill, the Cantonment Joint Magistrate would become a Cantonment Magistrate—a functionary of a new kind, whose office would fall within the proviso in the Civil Service Act, which declared that no new office created in India was necessarily to be filled by a Civilian. Advantage had been taken of the opportunity to consolidate and elucidate the law relating to Civil and Criminal Justice, as administered in Cantonments. But little, however, of the Bill was substantially new law, the provisions of two Sections excepted. One of these was Section X, which enabled the local Governments to make rules for a variety of purposes; he would read the clauses of it:

1*st*.—For regulating in cases in which the land within the limits of the Cantonment is the property of Government, and the occupation and use of which by private persons is only permissive, the conditions under which such occupation or use shall be allowed, and under which the Government may resume possession of such land, and under which compensation shall be given to persons occupying or using the land so resumed.

2*nd*.—For maintaining proper registers of property within the limits of the Cantonment, and for providing for the registration of transfers of such property.

3*rd*.—For regulating the manner in which houses within the limits of the Cantonment shall be claimable for purchase or hire, when necessary, for the accommodation of Military Officers.

4*th*.—For regulating the management and expenditure of any funds made available by law or by the Government for the purpose of public improvements within the limits of the Cantonment, or for carrying out any Rules and Regulations passed under this Section and the appointment of the necessary servants and establishments.

5*th*.—For the definition and prohibition of public nuisances.

6*th*.—For the maintenance generally of the Cantonment in a proper sanitary condition; for the prevention and cure of disease; for the management and regulation of the public roads, of conservancy and drainage; for the regulation and inspection of public and private necessaries, urinals, cess-pools, drains, and all places in which filth or rubbish is deposited; of slaughter-houses, public markets, houses of ill-fame, burial and burning grounds, and of all offensive or dangerous trades and occupations.

7*th*.—For the supervision and regulation of public wells, tanks, springs or other sources from which water is or may be made available for public use.

8*th*.—For the execution and promotion of works of public utility and convenience.

9th.—For the registration of deaths, and for making and recording observations and facts important for the public health and interests.

10th.—For the imposition of penalties on persons convicted of the breach of any Rule or Regulation passed under this Section, and for prescribing the manner in which offences under such Rules and Regulations shall be inquired into or be cognizable by any public servant. Provided that no such penalty shall exceed a fine of fifty Rupees, or imprisonment exceeding eight days.

The earlier clauses of the Section embraced matters which were notoriously sources of heart-burning and discontent in Cantonments. The later clauses covered the great causes of those glaring sanitary defects in Cantonments which had recently attracted so much attention. It was much better that the local Government should make rules on these subjects than that they should be regulated by any general enactment, for the circumstances of one Cantonment differed widely from those of another. He thought the list of subjects might properly be lengthened in Select Committee. His Excellency in Executive Council had recently appointed a Commission to collect and disseminate information as to the application of sanitary art to India, and if the Commission were placed in contact with the local Governments, they might usefully be left to exercise a wide discretion in framing rules, and might thus be able to combat sources of disease yet more prolific than any now specified in the Section. The other Section which exhibited a novelty in law was Section VI, and with regard to that a perfect stream of communications had flowed in upon him. That Section was as follows :—

"The Cantonment Magistrate shall, within the limits of the Cantonment to which he is appointed, exercise, in subordination to the Inspector-General of Police appointed under Act V of 1861 *(for the regulation of Police)*, all the powers which are vested by the said Act in a District Superintendent of Police, and shall in all Police proceedings be subject to the general control and direction of the Commanding Officer of such Cantonment, in like manner as the District Superintendent is, under Section IV of the said Act, subject to the general control and direction of the Magistrate of the District."

He spoke with much hesitation on the point, for he (Mr. Maine) had but little acquaintance with the conditions of Indian society in the Mofussil, but he thought that the opinions which had reached him might be classed as follows. First, there were two extreme views, which he might call the ultra-Military view and the ultra-Civil view. The ultra-Military view, which, he should say, was rather hinted at than expressed, was that all persons of whatsoever description within a Military Cantonment should be subject to Military Law exclusively. The ultra-Civil view was much more plausible, and had much more to recommend it; it was, that every Cantonment should be part of the Civil district, and that the Magistrate of the district should have the same power within the Cantonment as he had without it. This view might possibly be tenable in Bengal Proper: but as concerned Upper India, it was vain to

deny that it was a country militarily held, and it would be mischievous to impair in any way the prestige and authority of Commanding Officers. An even greater evil of the arrangement proposed was that it might tempt the Commanding Officer to use his soldiers for the suppression of civil crime, and if any one thing was settled by experience, it was that soldiers made the worst of Policemen. Other opinions which prevailed amounted to a compromise between these extremes, and one of these compromises was reflected in the Section as drawn. It was, however, open to the objection that it set aside the principle of the new Police Act, which deprived the Magistrate of direct power over the Police, and on the whole, if the Select Committee to whom the Bill would be referred should consent, he would prefer an arrangement, also in the nature of a compromise, which had been suggested to him by Colonel Barrow, the Commissioner of Lucknow, who had had much experience as a Cantonment Joint Magistrate. The new Section, to which he was prepared to assent in Committee, would run as follows:

The District Superintendent of Police shall within the limits of the Cantonment, in subordination to the Inspector-General of Police under Act V of 1861 (for the regulation of Police), exercise the powers of a Police Officer, and shall in the administration of the Police be subject to the general control and direction of the Commanding Officer of such Cantonment, in like manner as under Section IV of the said Act he is subject to the Magistrate of the District.

The residue of the Bill seemed to be generally approved of, although some valuable suggestions had reached him applying to points of detail.

The Motion was put and agreed to.

FRENCH BANK BILL.

The Hon'ble Mr. Maine also presented the Report of the Select Committee on the Bill to enable the "Comptoir D'Escompte of Paris" to sue and be sued in the name of the Chief Manager of the Indian Agencies of the said Company.

ALIMENTARY SALT (CENTRAL PROVINCES) BILL.

The Hon'ble Mr. Harington moved that the Report of the Select Committee on the Bill for regulating the importation and manufacture of Alimentary Salt in the territories administered by the Chief Commissioner of the Central Provinces be taken into consideration.

The Motion was put and agreed to.

The Hon'ble Mr. Harington also moved that the Bill be passed.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill to give further effect to the provisions of Act IV of 1863 (to give effect to certain provisions of a treaty between His Excellency the Earl of Elgin and Kincardine, Viceroy and Governor-General of India, and His Majesty the King of Burmah)—The Hon'ble Messrs. Harington, Maine, Ellis and Bullen.

On the Bill to constitute an Office of Official Trustee—The Hon'ble Messrs. Harington, Maine, Ellis, Roberts, Anderson, Brown and Bullen.

On the Bill to regulate the administration of Civil and Criminal Justice, and the superintendence of Police and conservancy within the limits of Military Cantonments—The Hon'ble the Lieutenant-Governor of Bengal, the Hon'ble Sir R. Napier, and the Hon'ble Messrs. Harington, Maine, Grey, Ellis, Roberts and Anderson.

The Council adjourned.

CALCUTTA,
The 24th February 1864.

A. G. MACPHERSON,
Offg. Depy. Secy. to the Govt. of India,
Home Dept.

Government Central Press.—No. 314 L. D.—8 4-76.—50.

Abstract of the Proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., C. 67.

THE Council met at Government House on Wednesday, the 2nd March 1864.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *Presiding.*
His Honour the Lieutenant-Governor of Bengal.
Major-General the Hon'ble Sir R. Napier, K. C. B.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble Sir C. E. Trevelyan, K. C. B.
The Hon'ble W. Grey.
The Hon'ble R. S. Ellis, C. B.
The Hon'ble A. A. Roberts, C. B.
The Hon'ble H. L. Anderson.
The Hon'ble J. N. Bullen.
The Hon'ble Maharaja Vezearam Guzzeputty Raj Bahadoor of Vizianagram.
The Hon'ble Rajah Sahib Dyal Bahadoor.

ACT XXI. OF 1856 EXTENSION BILL.

The Hon'ble MR. HARINGTON introduced the Bill to extend Act XXI. of 1856 (to consolidate and amend the law relating to the Abkaree Revenue in the Presidency of Fort William in Bengal), and moved that it be referred to a Select Committee, with instructions to report in one week.

The Motion was put and agreed to.

MIRZAPORE BILL.

The Hon'ble MR. HARINGTON also moved for leave to introduce a Bill to remove certain tracts of country in the District of Mirzapore from the jurisdiction of the local Courts. He said the Bill was introduced at the request of the Lieutenant-Governor of the North-Western Provinces, and with the concurrence of the local authorities. The object of the Bill was to enable the Lieutenant-Governor to place the Pergunnahs which were enumerated in the Schedule annexed to the Bill under the administration of Officers who should unite in their own persons both

Judicial and Revenue functions, and to declare the authorities by whom appeals from the orders of those Officers should be heard, a reservation being made in the case of capital sentences, which would require to be confirmed by the Sudder Court for the North-Western Provinces before they could be carried into execution. The part of the country to which the Bill related was situated in the District of Mirzapore, beyond the River Soane. It was described as a very wild tract of country, and the people were represented as being exceedingly rude and backward, or in a low state of civilization, requiring, in more than an ordinary degree, the protection of the Government by means of its local Officers. It was generally admitted that, for people in that condition, the system of administration proposed to be introduced in the part of the country referred to was better suited than a system of administration by separate functionaries. The same system had been tried in other parts of the country in a like condition, and the result had proved very beneficial to the people. It had been suggested that a section should be added to the Bill, with a view to remove the Pergunnahs mentioned in the schedule from the operation of the general Regulations and Acts relating to procedure, and to authorize the local Government to lay down rules of procedure for the guidance of the Officers employed in the administration of the part of the country in question. But irrespective of the doubts which existed whether it was competent to the Council since the passing of the Indian Councils' Act of 1861 (whatever might formerly have been the case) to delegate any part of its legislative functions to any other authority, which was really the effect of giving to local Governments the power to prescribe rules which were in the nature of laws, he believed it to be impossible for any local Government to frame rules of procedure more simple or less technical than those contained in the portions of the Civil and Criminal Procedure Codes, and in the Revenue Regulations, which generally—and indeed almost exclusively—came into operation in the cases which commonly arose in places like the tract of country which would be affected by the present Bill. The great object aimed at in all recent legislation relating to Civil, Criminal and Revenue procedure had been to render the laws as simple, speedy, cheap and free from technicalities as possible. The existing Codes of Civil and Criminal Procedure were in operation in all parts of British India except the Punjab, and the fact that no difficulty had been found in carrying out the provisions of those Codes in places which were inhabited by races who were just as rude and backward as the people who inhabited the tract of country to which the present Bill related, furnish the most satisfactory evidence of the great success that had attended the labours of the Legislature in that department of legislation. For those reasons he had not thought it advisable or proper to adopt the suggestion mentioned.

The Motion was put and agreed to.

LUCKNOW MUNICIPAL BILL.

The Hon'ble Mr. Maine, in moving for leave to introduce a Bill to provide for the appointment of a Municipal Committee for the City of Lucknow, said that though the object of the Bill was stated in its title with sufficient correctness for legislative purposes to be to provide for the appointment of a Municipal Committee for the City of Lucknow, its nature might perhaps have been made plainer if it had been designated a Bill to give legal status to the Municipal Committee of Lucknow. A Municipal Committee already existed there, and had been in existence for a considerable length of time, during which it had effected many important improvements in the city. But legislation was necessary to enable it to carry on operations effectively; for it was now a point fully settled that no Chief Commissioner, even with the sanction of the Governor-General of India in Council, could make new rules which would have the force of law unless he was specially authorized by the Legislature so to do. He hoped that when the Bill came into the hands of the Members, they would bear in mind the state of society to which it was intended to apply. Many interesting experiments had been tried in Oudh under the supervision of the present energetic Chief Commissioner, and some of these had borne remarkable fruit, but still it was too much to expect that Oudh had altogether emerged from a condition of pupilage and probation. Hence there were many provisions to be found in the Bill which might not be thought suitable under different circumstances. The measure was not one which could in any way be compared with the elaborate Bill for the Municipal government of the Town of Calcutta, or even with the new Municipal Bill for towns in the Mofussil, which was passed the other day in the Council of the Lieutenant-Governor of Bengal. Where a Municipality could be formed under ordinary conditions, much would of course be left to its members or to the constituency, which in this Bill was placed in the hands of the Chief Commissioner. So, again, this Bill legalized the levy of an Octroi duty. The levying of such a tax was a subject on which much might be said from a fiscal and economical point of view, but an Octroi was already in existence in Lucknow, and was, he believed, looked upon by the inhabitants as the natural and legitimate mode of levying Municipal rates. He had the satisfaction of knowing that the Bill met with the entire approval of the local authorities.

The Motion was put and agreed to.

PORT DUES (AMHERST) BILL.

The Hon'ble Mr. Maine also presented the Report of the Select Committee on the Bill to repeal Act VIII. of 1861 (for the levy of Port dues in the Port of Amherst).

FRENCH BANK BILL.

The Hon'ble MR. MAINE also moved that the Report of the Select Committee on the Bill to enable the "Comptoir D'Escompte of Paris" to sue and be sued in the name of the Chief Manager of the Indian Agencies of the said Company be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill be passed, with the amendments recommended by the Select Committee.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to extend Act XXI of 1856 (to consolidate and amend the law relating to the Abkaree Revenue in the Presidency of Fort William in Bengal)—the Hon'ble MESSRS. HARINGTON, MAINE and ELLIS.

The Council adjourned.

CALCUTTA,
The 2nd March 1864.

A. G MACPHERSON,
Offg. Depy. Secy. to the Govt. of India,
Home Dept.

Government Central Press.—No. 515 L. D.—5-4-76.—50.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., Cap. 67.

The Council met at Government House on Wednesday, the 9th March 1864.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *Presiding*.
His Honor the Lieutenant-Governor of Bengal.
Major General the Hon'ble Sir R. Napier, K.C.B.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble R. S. Ellis, C.B.
The Hon'ble A. A. Roberts, C.B.
The Hon'ble H. L. Anderson.
The Hon'ble C. H. Brown.
The Hon'ble Maharaja Vezearam Guzzeputty Raj Bahadoor of Vizianagram.
The Hon'ble Rajah Sahib Dyal Bahadoor.

LUCKNOW MUNICIPAL BILL.

The Hon'ble MR. MAINE introduced the Bill to provide for the appointment of a Municipal Committee for the City of Lucknow, and moved that it be referred to a Select Committee, with instructions to report in one week.

The Motion was put and agreed to.

MIRZAPORE BILL.

The Hon'ble MR. HARINGTON introduced the Bill to remove certain tracts of country in the District of Mirzapore from the jurisdiction of the local Courts, and moved that it be referred to a Select Committee, with instructions to report in one week.

The Motion was put and agreed to.

KONKAN BILL.

The Hon'ble MR. ANDERSON, in moving for leave to introduce a Bill to give validity to certain acts and proceedings of the Joint Judge of the Konkan, said that Act XXIX of 1845 empowered the Government of Bombay, with the con-

sent of the Governor-General of India in Council, whenever the state of Civil Judicial business might render it expedient, to appoint in any Zillah within the territories subject to Bombay a Joint Judge. The Judge of the Konkan having been entrusted with the conduct of certain inquiries under the orders of the Secretary of State for India, the measure which appeared most consistent with economy and the due efficiency of the Judicial administration in the Konkan, was to appoint a Joint Judge. The appointment was accordingly made, and the consent of the Governor-General of India in Council was subsequently solicited. This course had been followed on more than one previous occasion without objection. It had been held, however, by the Judges of the High Court, that the consent of the Governor-General of India in Council meant the *previous* consent. It had become necessary, therefore, to give validity by special enactment to all the decisions made, orders passed, and proceedings held by the Joint Judge, between the date of his appointment, the 25th February 1863, and the date on which the consent of the Governor-General of India in Council was received, the 11th July 1863. The present Bill had accordingly been framed to give the required validity to those decisions, orders, and proceedings.

The Motion was put and agreed to.

The Hon'ble Mr. Anderson having also applied to His Excellency the President that the Rules for the conduct of business should be suspended,

The President declared the Rules suspended.

The Hon'ble Mr. Anderson then introduced the Bill, and moved that it be referred to a Select Committee, with instructions to report in one week.

The Motion was put and agreed to.

MINORS' (BOMBAY) BILL.

The Hon'ble Mr. Anderson, in moving for leave to introduce a Bill for making better provision for the care of the persons and property of Minors in the Presidency of Bombay, stated that the Bill had its origin in a representation of the Judges of the Sudder Adawlut of Bombay, that instances had occurred in which the property of Minors had received great detriment from the management of natural guardians, and that the Civil Courts had not authority to take charge of property thus endangered, while there were near relatives willing to manage it on the Minors' behalf. It was suggested that an Act should be framed similar to Act XL of 1858, by which the property of Minors had been efficiently protected in the Presidency of Bengal. Accordingly, on the establishment of a Council in Bombay for making Laws and Regulations, such an Act was introduced and passed on the 15th of December 1862. On its being forwarded to the late Viceroy for his assent, a question was raised as to the competency of the Council of the Governor of Bombay to pass such

an Act. The question involved might be thus stated. In the 33rd Section of the Bill it was enacted that all orders passed by the Civil Court should be open to appeal, under the rules applicable to appeals in the Code of Civil Procedure. By another Section of the Bill the Civil Court was defined to be the Court of highest original jurisdiction in the district; in other words, the Zillah Court. The only appeal from a Zillah Court was to the High Court. But on turning to Act 24 and 25 Vic., Chapter 104, the Act by which the High Courts were established, it would be found that the 9th Section provided that the High Courts should have such appellate jurisdiction as might be granted by the Letters Patent. The Letters Patent might thus be taken as a portion of the Act, and the 15th Section of those Letters confined the appellate jurisdiction of the High Court to cases already subject to appeal to the Sudder Adawlut, and "to cases which shall become subject to appeal to the High Court by virtue of such Laws and Regulations relating to Civil Procedure *as shall hereafter be made by the Governor-General of India in Council.*" He (Mr. Anderson) said he could not resist the logical deduction suggested by these facts. It was obvious as a major premiss that the Bombay Council was not competent to create a new class of cases appealable to the High Court. It was equally clear as a minor premiss that the Bill on which the discussion was raised did create such a new class of cases: and it followed as a conclusion that in passing such a Bill the Bombay Council exceeded its competency. Under these circumstances, no other course was open but the introduction of a Bill for the consideration of the Governor-General's Council. But he (Mr. Anderson) trusted that he should not be regarded as transgressing the limits of his duty, when he expressed an opinion that the Section in the Letters Patent was quite indefensible. If applied literally,—and it must always be liable to a literal application,—it would so cripple the action of the Councils of Madras and Bombay, as to inflict an almost entire disability upon them. He trusted, therefore, that so patent an evil would at no distant time be met by an effectual remedy. The Bill which he sought permission to introduce was founded on Act XL of 1858, with such omissions as the different circumstances of the Bombay Presidency demanded. For instance, Act XL of 1858 alluded to the Court of Wards, and by an Act of 1793 the Board of Revenue was constituted the Court of Wards; but no Board of Revenue existed in the Bombay Presidency. A part of a Section in the Bill passed by the Bombay Council relative to the stamped paper on which petitions were to be written had been omitted as superfluous. There were also some Clauses, especially one relating to the marriages of Minors, which would require consideration by the Select Committee to which the Bill might hereafter be referred. With these observations he begged to move for leave to introduce the Bill.

The Hon'ble Mr. Maine said that the late Lord Elgin had in truth no option in refusing to assent to the Bill passed by the Bombay Council: he had no power to act otherwise than he did. There could be no question as to the proper

interpretation of the Letters Patent; but he would remind the Council that they were open to amendment at the end of three years from the date on which they came into operation. When the three years expired, the Secretary of State for India would have an opportunity of revising the Letters Patent, and no doubt the observations which had fallen from the Hon'ble Member who had last spoken would have due consideration.

The Motion was put and agreed to.

The Hon'ble MR. ANDERSON having applied to His Excellency the President that the Rules for the conduct of business should be suspended,

The President declared the Rules suspended.

The Hon'ble MR. ANDERSON then introduced the Bill, and moved that it be referred to a Select Committee, with instructions to report in one week.

The Motion was put and agreed to.

PORT DUES (AMHERST) BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill to repeal Act VIII of 1861 (for the levy of Port dues in the port of Amherst) be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill be passed.

The Motion was put and agreed to.

ACT XXI OF 1856 EXTENSION BILL.

The Hon'ble MR. HARINGTON presented the Report of the Select Committee on the Bill to extend Act XXI of 1856 (to consolidate and amend the law relating to the Abkaree Revenue in the Presidency of Fort William in Bengal), and having applied to His Excellency the President that the Rules for the conduct of business should be suspended,

The President declared the Rules suspended.

The Hon'ble MR. HARINGTON then moved that the Report be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. HARINGTON then moved that the Bill be passed.

The Motion was put and agreed to.

HINDOO AND MAHOMEDAN LAW OFFICERS' BILL.

The Hon'ble MR. ROBERTS presented the Report of the Select Committee on the Bill to repeal the laws relating to the Offices of Hindoo and Mahomedan Law Officers, and to the Offices of Cazee-ool-Cozaat and of Cazee, and to abolish the former Offices.

BURMAH CUSTOMS BILL.

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill to give further effect to the provisions of Act IV of 1863 (to give effect to certain provisions of a Treaty between His Excellency the Earl of Elgin and Kincardine, Viceroy and Governor-General of India, and His Majesty the King of Burmah).

EMIGRATION (CONSOLIDATION) BILL.

The Hon'ble MR. MAINE also presented the Report of the Select Committee on the Bill to consolidate and amend the laws relating to the Emigration of Native labourers.

REGISTRATION OF ASSURANCES.

The Hon'ble MR. ELLIS presented the Report of the Select Committee on the Bill to provide for the Registration of Assurances.

The following Select Committees were named :—

On the Bill to provide for the appointment of a Municipal Committee for the City of Lucknow—the Hon'ble Messrs. Harington, Maine, Ellis, Roberts, and Anderson.

On the Bill to remove certain tracts of country in the District of Mirzapore from the jurisdiction of the local Courts—the Hon'ble Messrs. Harington, Maine, and Roberts.

On the Bill to give validity to certain acts and proceedings of the Joint Judge of the Konkan—the Hon'ble Messrs. Harington, Maine, Ellis, Roberts, and Anderson.

On the Bill for making better provision for the care of the persons and property of Minors in the Presidency of Bombay—the Hon'ble Messrs. Harington, Maine, Ellis, Roberts, and Anderson.

The Council adjourned.

A. G. MACPHERSON,
Offg. Depy. Secy. to Govt. of India,
Home Dept.

CALCUTTA,
The 9th March 1864.

Government Central Press.—No. 516 L. D.—19-4-76.—50.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Wednesday, the 16th March 1864.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Honour the Lieutenant-Governor of Bengal.
Major-General the Hon'ble Sir R. Napier, K.C.B.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble R. S. Ellis, C.B.
The Hon'ble A. A. Roberts, C.B.
The Hon'ble H. L. Anderson.
The Hon'ble C. H. Brown.
The Hon'ble J. N. Bullen.
The Hon'ble Rajah Sahib Dyal Bahadoor.

SMALL CAUSE COURTS (PRESIDENCY TOWNS) BILL.

The Hon'ble MR. MAINE, in moving for leave to introduce a Bill to extend the jurisdiction of the Courts of Small Causes at Calcutta, Madras and Bombay, and to provide for the appointment of an increased number of Judges of those Courts, said—"It is no doubt well known to your Excellency and the Council that a Bill intituled a Bill for the improvement of Civil Justice in Suits of Small Value was among those published by the late Viceroy under the 19th of our Rules for the conduct of business. It proposes certain alterations, which I believe to be improvements, in the constitution of the Small Cause Courts, and the Statement of Objects and Reasons sketches a plan, to be executively carried out, for the extension of the Small Cause Court system in the Mofussil. The measure is one to which I attach very great importance, but it must inevitably bring up a large number of fundamental questions respecting the administration of civil justice in India, and will probably give occasion for lengthened discussion. Now one result of the calamitous event which occurred in the autumn has been greatly to disturb all our legislative arrangements, and to materially shorten the time which, with due consideration for the Additional Members, can be appropriated to our sittings. Under these circumstances, I have deemed it right,

though not without reluctance, to give precedence to certain other Bills, which, though not of greater importance in some respects than the measure to which I have referred, have nevertheless been much longer before the Council, or much longer in preparation. The event has, I think, proved the propriety of this course, for the Council, before it separates, will, I trust, have passed the Registration, Emigration and Cantonment Magistrate's Bills—all of them measures long demanded and of first class importance—not to speak of measures also important in their way, such as the Whipping Act, the Aden Act, and the Official Trustee Bill. I do not therefore complain of the delay which has occurred in regard to the Bill to improve the administration of civil justice; indeed, much information on its subject has yet to come in from the local Governments, and I am constantly in receipt of suggestions (and of course of complaints also) which have reference to it, some of them valuable, others not perhaps very wise, but then there is at least this advantage even in foolish complaints, that they attract attention to the points on which misapprehension exists. Moreover one of the Bills which I hope will be passed —the Registration Bill—is almost a condition precedent to any amendment of the administration of civil justice in India." MR. MAINE, after stating that for these reasons he would not be able to take up the Bill to which he referred during the present sittings, proceeded to say that there was one class of Small Cause Courts which urgently and immediately demanded the attention of the Council, the Small Cause Courts of the Presidency Towns. There was no reason in theory why a Court which had jurisdiction up to 500 Rupees should not have it up to 1,000, and public feeling was, he believed, strongly in favour of the increase of jurisdiction. One remarkable proof of the necessity of such a measure was furnished by a paper supplied to him which showed that, in order so to reduce their claims as to bring them within the limit of Small Cause Court jurisdiction, persons sometimes abandoned a third of their debts, and it appeared that, in one case to which Europeans were parties on both sides, more than half the whole claim had been given up to gain the advantage of the speedier and cheaper procedure. Bills to increase the jurisdiction to the proposed amount had in fact been introduced into the Councils of the Governor of Bombay and of the Lieutenant-Governor of Bengal. The former measure came to maturity, but was vetoed by Lord Elgin under legal advice, owing to the peculiarity in the High Court Letters Patent, which was adverted to last week by the Hon'ble Mr. Anderson. The Bengal Bill was withdrawn on account of the same difficulty. The question, however, was one eminently for the decision of the local Councils, and the Viceregal Council would doubtless regard their desire as conclusive. The Bill would not interfere with a plaintiff's power to proceed in the High Court if he pleased, under a certain disadvantage in respect of costs.

The Motion was put and agreed to.

The Hon'ble Mr. Maine having applied to His Excellency the President that the Rules for the conduct of business should be suspended,

The President declared the Rules suspended.

The Hon'ble Mr. Maine then introduced the Bill, and moved that it be referred to a Select Committee, with instructions to report in one week.

The Motion was put and agreed to.

CALCUTTA MAGISTRATES JURISDICTION EXTENSION BILL.

The Hon'ble the Lieutenant-Governor of Bengal in moving for leave to introduce a Bill for extending the jurisdiction of the Magistrates of Police in Calcutta, said—"The Bill which I now ask leave to introduce for the purpose of extending the jurisdiction of the Magistrates in Calcutta, differs materially from that which has been printed and is, I believe, in the hands of Hon'ble Members. It is of more limited extent, inasmuch as I propose to confine its operation to cases arising under Chap. XIV of the Indian Penal Code, and to confer upon the Magistrates, in respect to such cases only, those powers of punishment which may be exercised under the Mofussil Code of Criminal Procedure by a Subordinate Magistrate of the 1st Class. It is of wider scope, because I wish to extend to Calcutta certain provisions of the Code of Criminal Procedure for enabling the Magistrates to prohibit the continuance of nuisances, and to deal with them more effectually when they are committed or are not abated. The history of the Bill is briefly this. It will be in the recollection of the Council that a letter was recently written to the Commissioner of Police, directing him to prohibit the practice of throwing dead bodies into the river, and pointing out that the practice was an offence under the Indian Penal Code. The Commissioner, in reporting the measures taken to prevent it, stated as follows:—

Orders will be issued to prevent bodies being thrown into the river in Calcutta and the Suburbs so far as they are in my jurisdiction, and I will take the earliest opportunity of bringing to trial persons throwing them in. The Magistrates of Calcutta have, however, no power of trying cases summarily under the Penal Code, and the most trifling offence, if not included in the Police Act, must be sent up for trial to the High Court, the Judges of which naturally set their faces against their time and that of the Grand and Petty Juries being taken up by matters which might, with much greater advantage, be disposed of by the Magistrates. I am clearly of opinion that an Act of the Legislature should be passed similar to that in force in the Mofussil, giving the Calcutta Magistrates powers to dispose of cases under the Penal Code up to a certain extent.

"Concurring entirely in this opinion, I took immediate measures for bringing into the Bengal Council a Bill to give the Magistrates the necessary powers to deal with offences under the 14th Chapter of the Code; and after consultation with some of my colleagues, it was thought expedient so to frame the Bill

as to include all offences in the Code punishable with imprisonment not exceeding six months, and one or two crimes of a graver nature, in respect to which the Magistrates might convict and punish up to the limits of their power, reserving cases requiring a heavier punishment for commitment to the High Court. The object of this was to remove a long-standing cause of complaint, and to ensure more certain as well as speedier justice by enabling the Magistrates to deal with a number of petty offences under the Penal Code, as they are now competent to deal with other like offences under the Police Acts, instead of taking up the time of Judges, Grand Juries, and Petty Juries, and setting in motion the whole machinery of a High Court of Justice for the trial of such cases. I was not then fully aware of the objections that might be raised to this course,—objections affecting the competency of the Bengal Council to give to the Police Magistrates even a concurrent jurisdiction for the trial of these cases, which are now solely triable by the High Court, and objections restricting in some measure the liberty of even this Council to legislate on matters connected with the administration of Criminal Justice in the Presidency Towns. These objections, however, have since been made known to me, and it is for this reason that I now come to this Council and ask leave to introduce a Bill affecting no doubt the administration of Criminal Justice in Calcutta, but affecting it only for the purpose of preventing offences against the health and safety of the public, and one of an urgent and temporary character, to be superseded whenever a comprehensive Code of Criminal Procedure for the Presidency Towns may be enacted. Since the question was first raised, I have also been put in possession of a Minute by Mr. John Strachey, the President of the Bengal Sanatory Commission, from which, as I believe it has not yet been seen by Hon'ble Members, I beg leave to read some extracts. Mr. Strachey observes—

For many years past the sanitary condition of Calcutta has been a constant subject of complaint, and this condition has probably never been much worse than it is at the present time. The state even of the Southern Division of the Town, which contains the fine houses of the principal European inhabitants, is often most offensive and objectionable, while with regard to the Northern or Native Division of Calcutta, which contains some hundred thousand people, it is no figure of speech, but the simple truth, to say that no language can adequately describe its abominations. In the filthiest quarters of the filthiest Towns that I have seen in other parts of India, or in other countries, I have never seen anything which can be for a moment compared with the filthiness of Calcutta. This is true not merely of the inferior portions of the Town, or of the bye-ways and places inhabited by the poorer classes, but it is true of the principal thoroughfares and of the quarters filled with the houses of the richest and most influential portion of the Native community. If a plain unvarnished description of the streets of the Northern Division of Calcutta, bordered by their horrible open drains in which almost all the filth of the City stagnates and putrifies, were given to the people of England, I believe that they would consider the account altogether incredible. The condition of the river upon the banks of which Calcutta stands is as abominable as

that of the City itself. I need only mention one fact regarding it. More than five thousand human corpses have been every year thrown from Calcutta into the river which supplies the greater part of the inhabitants with water for all domestic purposes, and which for several miles is covered with shipping as thickly as almost any river in the world. Fifteen hundred corpses have actually been thrown into the river in one year from the Government Hospitals alone. That such things should be true, seems really to be hardly credible. I am aware that measures have now been taken by the Government of Bengal for putting a stop to this shameful practice, but they have only been taken during the last few days, and I have referred to it here because it serves as a good index to the state of things which has hitherto existed. Of the many other ways in which the water of the river is polluted, it is not necessary now to speak.

"Now with respect to this I may remark that the Government of Bengal has not been insensible to the disgraceful and injurious character of this practice. In 1854 an endeavour was made to suppress it, and after opinions had been called for from the Local Officers, the papers were referred to Mr. Mills, the Bengal Member of the Legislative Council, in order that if possible a Law might be passed to prevent it: but Mr. Mills, one of the ablest and most trusted Officers that the Government ever had, after further enquiry and consultation with the Clerk Assistant of the Council, reported that if the Hindoos were prohibited from throwing their dead into the river, it would be regarded as an unwarrantable interference with the Hindoo religion, and the subject was consequently dropped. I am happy to add that, during the ten years that have intervened since that time, public opinion on this subject has so far advanced, that at a recent Meeting of the Justices of Calcutta, the Native Justices unanimously adopted a resolution condemnatory of the practice which is now prohibited with universal consent. The intelligent portion of the Hindoo community are now satisfied that religion does not require them to cast their dead into the river, and that health and decency require that the practice should cease. So as regards cremation, it has been lately represented that to prevent the Hindoos of Calcutta from openly burning their dead at a public ghât in the midst of the Town, is an interference with their religion. This I entirely deny. No one can be more averse to interference with the religion of the Natives than I am. I have incurred much obloquy on account of my supposed proclivity towards the Natives in this respect, and in regard to certain educational questions, am even now regarded in some quarters as little better than obstructive. But when a cry of interference with religion is raised merely for some temporary purpose, and the sacred promise of the Queen is used as a pretext to justify opposition to measures deemed necessary for the public health, I think that such pretexts and pretences may very properly be disregarded. Mr. Strachey goes on to say:—

It is not my wish to attempt to describe in detail the condition of Calcutta. To all who are here upon the spot, the facts are notorious. The state of the Capital of British India.

one of the greatest and wealthiest Cities in the world, is a scandal and a disgrace to a civilized Government. The questions that are involved are not mere questions of ordinary sanitary improvement, such as those which commonly arise in other Cities and in other countries. The condition of this City is such that it is literally unfit for the habitation of civilized men. Even if we put aside all questions of Public Health, and look on the matter as one of common decency, or as one of good government, the state of Calcutta is disgraceful to the last degree.

The constitution of the Calcutta Municipality under the new law which came into operation last year is, doubtless, an immense improvement upon all that had preceded it, and it would be very unjust to throw upon the present Municipal Body the discredit of the state of things which actually exists. On the contrary, the Municipality appears to deserve great credit for many important measures that it has carried out. But in the administration of that part of its duties which concerns the maintenance of the Town in a proper sanitary condition, the Municipality has necessarily failed, because it has not possessed the necessary power.

The rules and regulations which already exist are, as I have before said, for the most part good. Their improvement is not the work that is now urgently necessary. The first thing required is the provision of an executive authority strong enough to carry out necessary regulations and to enforce the Law for the suppression of the most disgusting nuisances.

And then, after recommending that the Head of the Municipality should also be Head of the Police, he proceeds to point out what change in the Law is required. With regard to the union of these two offices, I beg leave to remind the Council that, before the existing Calcutta Municipal Act was passed, the great objection made by the public to the former system was that it was impossible for one Officer to do justice to both duties, and that the Officer charged with the superintendence of the Police, whose duty consists not only in the prevention of nuisances and the enforcement of sanatory laws, but also in the suppression and detection of crime and the preservation of order, could not properly direct the conservancy of the Town. Individually I did not concur in that objection, but I was assured by some of the independent Members of the Bengal Council that the Bill (whereby a large weight of taxation was imposed on the Town) could not be carried unless on the understanding that the Head of the Municipality should have nothing to do with the Police: and though with some difficulty the Council were induced to agree to a clause enabling the Government to appoint the Chairman of the Justices to be also Commissioner of Police, yet it was understood that this arrangement was not to take effect till the new system had had a fair trial, and the result of the separation of the two offices could be dispassionately judged. I do not think that sufficient time has yet elasped to form a decided opinion upon the working of the present system, or to justify me in making the appointment which the Law allows. And I am certain that if the Commissioner of Police, who is himself one of the Justices, pays, and requires his subordinates to pay, the same attention to their conservancy duties that they do to the

preservation of the peace and the detection of crime, there need be nothing to complain of. Mr. Strachey then remarks,—

Legislation would, I believe, still be wanted to place the Municipal constitution on a completely satisfactory footing At present it may, for all practical purposes, be considered that the only two laws under which a Magistrate in Calcutta can deal summarily with criminal cases that come before him are the Police Act (Act XIII of 1856) and the Conservancy Act (Act VI of 1863) Under these laws he can deal with most of the nuisances that arise, but not with all Thus, for example, in the matter of throwing dead bodies into the Hooghly, the orders of His Honor the Lieutenant-Governor, lately addressed to the Commissioner of Police, point out that this is a public nuisance within the meaning of Section 268 of the Indian Penal Code, and that it is punishable under Section 290 But, although legally a public nuisance, this is not a nuisance the punishment of which is provided for by either of the laws under which the Magistrates of Calcutta act, and consequently every case of the kind must be committed for trial to the High Court This is almost equivalent to saying that nothing can be done at all It appears essential that the Police Magistrates of Calcutta should be empowered by law to deal summarily with all offences affecting the public health, safety, convenience, decency, and morals, punishable under Chapter XIV of the Indian Penal Code, and in which the penalty does not exceed six months' imprisonment.

It appears essential that power should exist similar to that which Section 68 of the Code of Criminal Procedure gives to the Magistrate of the district in all places outside Calcutta Under that Section, the Magistrate may, except in certain specified classes of cases, 'without 'any complaint, himself take cognizance of any offence which may come to his knowledge, 'and may issue a summons, or, in cases where a warrant may issue, a warrant of arrest against 'the person known or suspected to have committed such offence, in the same manner as if a 'complaint had been made against such person'

I think that the Head of the Municipality, who under the plan suggested in this Minute would also be Head of the Police, and a Magistrate, ought certainly to possess this power of instant action in all offences under the Police and Conservancy Acts, and under Chapter XIV of the Indian Penal Code Whether the same power should be given to all Magistrates appears questionable. It might be desirable to provide by law that this authority shall be exercised only by such Magistrates as shall be duly empowered by the Local Government

I think also that powers similar to those described in Sections 62 and 63 of the Code of Criminal Procedure should be given to all Magistrates in Calcutta These Sections make it lawful for any Magistrate by a written order to prevent obstructions and nuisances, and to prohibit any person from repeating or continuing a public nuisance

The whole of Chapter XX of the Code of Criminal Procedure regarding local nuisances might also, with great advantage, be made applicable to Calcutta.

Under this Chapter the appointment of a Jury is necessary in all doubtful cases, and security is provided for full publicity, and against the exercise of any improperly arbitrary power.

"I would therefore ask the Council for leave to bring in a Bill to provide immediately, and temporarily, pending the enactment of a more comprehensive law of Criminal Procedure in the Presidency Towns,—*first*, for enabling the Cal-

cutta Magistrates to deal summarily with offences against the 14th Chapter of the Penal Code with power to punish up to the limits prescribed by the Code of Criminal Procedure for Subordinate Magistrates of the 1st Class,—and *second*, for extending to Calcutta the provisions of Sections 62, 63, and 68, and Chapter XX of the Code of Criminal Procedure, so that the Magistrates, and especially the Commissioner of Police, may be empowered the more effectually to prevent injury to human life, health and safety, and to deal generally with local nuisances in the same way as they can now be satisfactorily dealt with in the Mofussil. And I trust that the Select Committee to whom the Bill, if introduced, will be referred, may be able to present it next week in a shape in which the Council can pass it."

The Hon'ble Mr. Harington said His Honor the Lieutenant-Governor of Bengal having materially altered the scope of his Bill as printed and circulated, and having agreed to restrict the application of the Bill to a very small class of cases, in respect of which it certainly seemed desirable, in connection with the measures now in progress, or under consideration, for improving the sanatory condition of the Town of Calcutta, that the jurisdiction of Police Magistrates in Calcutta should be enlarged, the objections which he (Mr. Harington) originally entertained to the Bill had been removed, and he was quite satisfied to say "aye" to the motion before the Council. He was in favor of the extension to the Town of Calcutta of the Chapter of the Code of Criminal Procedure relating to local nuisances. He had no doubt that the provisions of that Chapter would prove very useful in carrying out the measures of sanatory reform to which he had referred, and that they would greatly strengthen the hands of the local authorities. He should be prepared to vote for the extension to the town of Calcutta, and, indeed, to the other Presidency Towns, of the other Sections of the Code of Criminal Procedure to which the Lieutenant-Governor had alluded, with the reservations mentioned by His Honor. He might add that the Government of India had long felt that it was not fair to the High Courts of Judicature at the several Presidency Towns to impose upon those Courts the trial of the numerous offences of a comparatively trifling nature, which were committed for trial before them at every Criminal Sessions, and the Government of India would long since have caused a Bill to be introduced into this Council for the purpose of relieving the High Courts of the trial of such offences, but the Secretary of State had intimated that the whole question of the administration of Criminal Justice in the Presidency Towns was under the consideration of Her Majesty's Government, and that the views of Her Majesty's Government would shortly be communicated to the Government of India. The Government of India awaited this communication before determining upon the measures to be adopted in the direction of affording relief to the High Courts as regarded some portion of the original Criminal jurisdiction now exercised by them.

His Honor the Lieutenant-Governor said he desired to express his opinion of the very great necessity which existed of at once doing something to relieve the High Courts of the smaller class of cases with which the time of the Judges was now occupied. He trusted that His Excellency the Viceroy would call the attention of the Home Authorities to the matter, as early action was certainly required.

The Hon'ble MR. MAINE said he must remind his Hon'ble friend that the alternative was not exclusively between the High Court and the Magistrates. There was an intermediate expedient, the creation of a Court of Session on the principle of an English Court of Quarter Sessions, or a Recorder's Court. For his part, he must own that, if there was one prepossession of his countrymen with which he sympathized more than another, it was their prejudice in favour of trial by Jury. It seemed to him to be a point on which popular feeling exactly coincided with the soundest principle and with the results of the most certain experience. It was of course true that the system broke down in extreme cases on account of its costliness and lengthiness, and he (Mr. Maine) was heartily in favor of the Bill as now limited by his Hon'ble friend, but he could not quite admit that all jurisdiction taken away from the High Court must necessarily be transferred to the Police Magistrates.

The Motion was put and agreed to.

The Hon'ble the Lieutenant-Governor having applied to His Excellency the President that the Rules for the conduct of business should be suspended,

The President declared the Rules suspended.

The Hon'ble the Lieutenant-Governor then introduced the Bill, and moved that it be referred to a Select Committee, with instructions to report in one week.

The Motion was put and agreed to.

HINDOO AND MAHOMEDAN LAW OFFICERS' BILL.

The Hon'ble MR. ROBERTS moved that the Report of the Select Committee on the Bill to repeal the laws relating to the Offices of Hindoo and Mahomedan Law Officers, and to the Offices of Cazee-ool-Cozaat and of Cazeç, and to abolish the former offices, be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. ROBERTS also moved that the Bill be passed.

The Motion was put and agreed to.

BURMAH CUSTOMS BILL.

The Hon'ble Mr. Maine moved that the Report of the Select Committee on the Bill to give further effect to the provisions of Act IV of 1863 (to give effect to certain provisions of a treaty between His Excellency the Earl of Elgin and Kincardine, Viceroy and Governor-General of India, and His Majesty the King of Burmah) be taken into consideration.

The Motion was put and agreed to.

The Hon'ble Mr. Maine also moved that the Bill be passed.

The Motion was put and agreed to.

EMIGRATION BILL.

The Hon'ble Mr. Maine, in moving that the Report of the Select Committee on the Bill to consolidate and amend the laws relating to the Emigration of Native laborers be taken into consideration, said that the Committee stated in their report that they had made a considerable number of alterations in details, but had not changed the general principle of the Bill. He himself was a Member of the Committee, but his name was also on the back of the Bill, and therefore he might perhaps venture to say that the labors of the Committee had greatly contributed to the lucidity of the Bill and to the success of the system it embodied. One part of the Report should be read—

"Among other papers to which our attention has been directed, is a report addressed in January 1863 by Mr. Hay Hill, Her Britannic Majesty's Consul at Réunion, on the subject of the condition and treatment of Indian laborers in that settlement. It does not appear that the matters referred to by Mr. Hill can be dealt with through legislation in the Council of the Governor-General for making Laws and Regulations, and we therefore content ourselves with calling the attention of the Executive Government to this important report. Assuming the correctness of Mr. Hill's statements, it would seem that there is much difficulty in obtaining information as to the treatment of laborers after distribution in the Island of Réunion, and in procuring trustworthy statistics of the mortality prevailing among them. We desire to express a strong opinion of the value of such information and statistics, inasmuch as without them, the powers reserved to the Governor-General in Council by Sections LXIV, LXV, and LXVI of the Bill, may be rendered nugatory, and the securities afforded by protective legislation, whether on the part of British or of Foreign Colonies, may be seriously impaired."

With reference to this passage, he might state that the Committee's report had met with the most respectful consideration from the Executive Council, and that the attention of the Home Government would be without delay called to the subject. A communication had lately been received from the Government of the Mauritius, containing many objections of detail to the Bill, and some objections which could only be called sweeping. Nearly all the objections of detail had been already met by the amendments made by the Select Committee. The other

objections consisted of general charges, mere inuendoes in fact against the Bill. Of these one was that the Bill was intended to stop Emigration. The answer to this was simple: namely that the system of the Bill is identical with the system of the law recently passed for the regulation of the Emigration of laborers from one part of Bengal to another. So that if the Mauritius Government held that this measure was intended to stop Emigration, they must go further and hold also, that the Indian Government intended by the law to which he had referred, to stop Emigration of laborers from one part of India to another; and that supposition he would take the liberty of calling absurd. In introducing the Bill, he had said that, if it erred at all, it was on the side of stringency. But he must now withdraw even that conditional admission, for the Select Committee had struck out everything which looked like a superfluous precaution, and, as the Bill now stood, he was convinced there was nothing in it to prevent any Colony, and least of all a Colony which had so high a character as the Mauritius, from obtaining, if it only used fair means, as many Emigrants as it pleased to recruit. A still more extraordinary charge, and one which argued little knowledge of India, was advanced by the Mauritius Government. It appeared to suppose that there was a lack of proper control over the Magistrates who had to give effect to certain provisions of the measure. Thus it was actually insinuated that Civil Officers in India were under too little control and had too much discretion. A more unfounded imputation was never directed against a Government not unused to baseless complaints. The reverse would be nearer the truth. He was almost afraid to say to how many superior authorities a Magistrate would be amenable, who misconducted himself as the Mauritius Government had suggested. If any Magistrate refused to register an Emigrant out of mere caprice or some general dislike to emigration, there was not a shadow of doubt that he would speedily encounter the marked disapproval of his superiors. On the whole, he considered that the Bill was one which held the balance with extreme fairness between the Emigrant who needed protection and the Colony which required labour.

The Motion was put and agreed to.

The Hon'ble Mr. Maine, with the permission of His Excellency the President, then moved the following amendments, of which notice had not been given:—

The addition at the end of Section XXXI of the words—"on proof of the desertion of any Emigrant before reaching the depôt for which he was registered, the fee paid in respect of such Emigrant may be refunded by the Magistrate to the Recruiter by whom it was paid, under such rules as shall from time to time be made in that behalf by the Governor-General of India in Council."

The addition at the end of Section XXXIV of the words—"on proof of the desertion of any Emigrant before reaching the depôt for which he was registered, the fee paid in respect of such Emigrant may be refunded by the Protector to the Recruiter by whom it was paid, under such rules as shall from time to time be made in that behalf by the Governor-General of India in Council."

And the addition at the end of Section LI of the words—"if it shall appear to the satisfaction of the Protector of Emigrants that any Emigrant has lost the copy of the registration aforesaid, the] Protector may furnish such Emigrant with a copy of such registration to be made from the copy received by the Protector from the Magistrate under Section XXXII, or from the Register kept by himself under Section XXXIII, and shall thereupon allow such Emigrant to embark."

The Motions were severally put and agreed to.

The Hon'ble MR. BULLEN said that in Section LIX a slight amendment was required. As it stood, every vessel carrying Emigrants was bound to leave Garden Reach within 24 hours of the embarkation of the Emigrants. Now the Bill applied to Emigration from Madras and Bombay as well as from Calcutta, and it was clear that vessels sailing from Madras or Bombay could not by any possibility sail from Garden Reach at all. Therefore he thought the Section should be so altered as to show that it was meant to apply only to vessels sailing from Calcutta. He moved that the words "from the Port of Calcutta" be added after the word "Emigrants" in the second line of Section LIX.

The Motion was put and agreed to.

The Hon'ble MR. MAINE having applied to His Excellency the President to suspend the Rules for the conduct of business,

The President declared the Rules suspended.

The Hon'ble MR. MAINE then moved that the Bill be passed with the amendments recommended by the Select Committee and those now adopted.

The Motion was put and agreed to.

TOLLS BILL.

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill to amend Act VIII of 1851 (for enabling Government to levy Tolls on Public Roads and Bridges).

OFFICIAL TRUSTEE BILL.

The Hon'ble MR. MAINE also presented the Report of the Select Committee on the Bill to constitute an Office of Official Trustee.

LUCKNOW MUNICIPAL BILL.

The Hon'ble MR. MAINE also presented the Report of the Select Committee on the Bill to provide for the appointment of a Municipal Committee for the City of Lucknow.

MIRZAPORE BILL.

The Hon'ble MR. HARINGTON presented the Report of the Select Committee on the Bill to remove certain tracts of country in the district of Mirzapore from the jurisdiction of the local Courts.

KONKAN BILL.

The Hon'ble MR. ANDERSON presented the Report of the Select Committee on the Bill to give validity to certain acts and proceedings of the Joint Judge of the Konkan, and having applied to His Excellency the President that the Rules for the conduct of business should be suspended,

The President declared the Rules suspended.

The Hon'ble MR. ANDERSON then moved that the report be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. ANDERSON then moved that the Bill be passed.

The Motion was put and agreed to.

MINORS' (BOMBAY) BILL.

The Hon'ble MR. ANDERSON also presented the Report of the Select Committee on the Bill for making better provision for the care of the persons and property of Minors in the Presidency of Bombay.

The following Select Committees were named :—

On the Bill to extend the jurisdiction of the Courts of Small Causes at Calcutta, Madras, and Bombay, and to provide for the appointment of an increased number of Judges of those Courts—His Honor the Lieutenant-Governor of Bengal, and the Hon'ble Messrs. Harington, Maine, Ellis, Anderson, and Brown.

On the Bill for the extension of the jurisdiction of the Magistrates of Police in Calcutta—His Honor the Lieutenant-Governor, and the Hon'ble Messrs. Harington, Maine, Ellis, and Bullen.

The Council adjourned.

A. G. MACPHERSON,
Offg. Depy. Secy. to Govt. of India,
Home Dept.

CALCUTTA,
The 16th March 1864.

Government Central Press.—No. 517 L. D.—5-8-76—50.

Abstract of the Proceedings of the Council of the Governor General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

THE Council met at Government House on Wednesday, the 23rd March 1864.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Honor the Lieutenant-Governor of Bengal.
Major-General the Hon'ble Sir R. Napier, K. C. B.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble R. S. Ellis, C. B.
The Hon'ble A. A. Roberts, C. B.
The Hon'ble H. L. Anderson.
The Hon'ble C. H. Brown.
The Hon'ble Rajah Sahib Dyal Bahadoor.

SMALL CAUSE COURTS (PRESIDENCY TOWNS) BILL.

The Hon'ble MR. MAINE in presenting the Report of the Select Committee on the Bill to extend the jurisdiction of the Courts of Small Causes in the Towns of Calcutta, Madras, and Bombay, and to provide for the appointment of an increased number of Judges of those Courts, said that the Bill was so framed that if any party to a cause was dissatisfied with the decision of the Court upon any question of Law or Equity, or upon any question as to the admission or rejection of evidence, he might in any suit for a sum in excess of Rs. 500 require the Court to state a case for the opinion of the High Court, and the Court could not refuse to do so. The Bill in fact gave only a concurrent jurisdiction in suits for sums between Rs. 500 and 1,000, and the plaintiff might sue at his option either in the High Court, or in the Small Cause Court; but if he sued in the former and did not recover as much as a thousand Rupees if the action was founded on contract, or three hundred Rupees if founded on wrong, he would be deprived of his costs, unless the Judge who tried the case certified that the action was one which was properly brought in the High Court. If the action were one which on account of its difficulty or novelty, or on account of the Small Cause Court having followed some erroneous course of decision, ought to have been brought in the High Court,

the plaintiff would have his costs allowed. The Select Committee had introduced a provision for what he considered to be adequate, although it might be moderate, remuneration for professional assistance rendered in cases for amounts between Rs. 500 and 1,000. On the other hand the Committee had reduced by one-half the scale of the institution fees in such suits, the scale given in the original Bill being somewhat too high.

CALCUTTA MAGISTRATES' JURISDICTION EXTENSION BILL.

The Hon'ble the Lieutenant-Governor of Bengal presented the Report of the Select Committee on the Bill to extend the jurisdiction of the Magistrates of Police in Calcutta.

MILITARY CANTONMENTS BILL.

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill to regulate the administration of Civil and Criminal Justice, and the superintendence of Police and conservancy within the limits of Military Cantonments.

TOLLS BILL.

The Hon'ble MR. MAINE also moved that the Report of the Select Committee on the Bill to amend Act VIII of 1851 (for enabling Government to levy Tolls on Public Roads and Bridges) be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill be passed with the amendments recommended by the Select Committee.

The Motion was put and agreed to.

REGISTRATION OF ASSURANCES.

The Hon'ble MR. ELLIS moved that the Report of the Select Committee on the Bill to provide for the Registration of Assurances be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. HARINGTON said he had two amendments to propose—

The first was in Section XXVIII. It had been pointed out to him by Mr. Bell, the Judge of the Small Cause Court at Jessore, that the Section as at present framed would operate hardly upon Native ladies, who from

their rank or other cause could not with due regard to the customs of the country appear in public. He would propose that the following words be added to the Section :—

"The provisions contained in this Section relating to the execution of powers of Attorney in the presence of the District Registrar or Deputy Registrar, shall not apply in the case of a Native woman of a rank or description, which according to the customs of the country would render it improper to require her personally to attend at the Office of the District Registrar or Deputy Registrar. In the case of any woman of the rank or description abovementioned, the District Registrar or Deputy Registrar if satisfied that the power of Attorney is the free and voluntary act of the woman by whom it purports to have been made, may attest the same without requiring her personal attendance at his Office. For the purpose of satisfying himself on this point, the District Registrar or Deputy Registrar may proceed or depute some trustworthy person to the residence of the woman to take her examination in the mode prescribed for taking the evidence of Native females of rank."

The Motion was put and agreed to.

The Hon'ble Mr. Harington then moved his second amendment, which was the addition to Section LII of the following words :—

"The application for the enforcement of a bond or other obligation for the payment of money under this Section shall be written on a stamp paper of one-fourth the value prescribed for a petition of plaint in a suit to recover the same amount under the provisions of Article 11, Schedule B, Act X of 1862, or any other law for the time being in force for regulating stamp duties."

The Motion was put and agreed to.

The Hon'ble Mr. Ellis having applied to His Excellency the President to suspend the Rules for the conduct of business,

The President declared the Rules suspended.

The Hon'ble Mr. Ellis then moved that the Bill be passed as now amended. He said—"the necessity and importance of some such measure as that now before the Council has long been recognized, and has since 1834 more or less occupied the attention of the Legislature in India. In that year it was suggested by the Court of Directors that Offices should be established for the registration of all transfers in land or any interest in land,—such registration to be compulsory under such penalties as might seem requisite. Draft Acts were subsequently prepared at various intervals by Mr. Amos,

the Judges of the Sudder Court of the North-West, Sir C. Jackson, Mr. Thornhill, and Mr. Grant the Solicitor of the East India Company, and lastly in 1858 by the Judges of the Sudder Court at Madras. These several projects of law have been consulted in framing the present Bill, and much advantage has been derived from the accumulated information on the subject of registration in India contained in the correspondence connected with the former Drafts. The result has been the preparation of a law for the registration of Assurances, which, although it does not extend compulsory registration so far as was advocated at one time, will be an immense improvement upon the present law, according to which registration is optional. The several Committees to whom the original Bill, of which the Bill now before the Council is an amended form, was referred have, I think, wisely determined not to make the law of registration too stringent on its first introduction, leaving its extension to the future, when the people at large from their experience of this limited measure shall have become fully sensible to the advantages of registration, and be prepared to receive without fear a more complete and extensive law on the subject. The measure as it is now presented to the Council will, it is trusted, secure the formal registration of every important transaction relating to immoveable property over a large portion of the empire, and by bringing together in central offices in each district all documents relating to such landed property, greatly facilitate all transfers of land by rendering comparatively easy the investigation of title. The prevention of suits founded on false claims supported by false witnesses and forged documents will in a considerable degree be attained as regards landed property of importance, and as regards the registration of documents relating to less important transfers of land and to moveable property, of which the registration is permissive, a considerable pressure will be created towards their registration by the favor with which registered documents will be regarded by the Courts of Law, and the suspicion which will attach to unregistered documents. This has been found to be the effect in Oude, where though there is no compulsory registration, facilities for registration have been afforded to the people, and where the habit of registering documents, both relating to immoveable and moveable property, is of recent but rapid growth. As regards the Bill now presented to the Council, it will be in the recollection of most Hon'ble Members that when the Select Committee presented their report last year, they recommended that the Bill as amended by them should be republished. Although this delayed the passing of the Bill for a year, it was considered advisable in consequence of the numerous and important alterations which had been made in the Bill since its introduction, and in order that the opinion of local Governments and the public generally should be obtained regarding these changes in the Bill.

Many very valuable suggestions have accordingly been received during the past year, and have been carefully considered by the committee. Many alterations and amendments have been consequently made, which there is reason to hope have rendered this important measure more Complete. Among these I may mention the extension of its operation to the local jurisdictions of the High Courts of the Presidency Towns of Calcutta, Madras, and Bombay. Again, in the Bill as originally drawn, it was proposed to limit the time allowed for bringing actions on unregistered instruments, the registration of which under the Bill was permissive, to two years from the date on which the cause of action arose as regards suits relating to immoveable property, and to six months as regards suits relating to moveable property. Further enquiry and reflection have however convinced the Committee that it was not desirable to alter the law of limitation now in force. That law was one that had been well considered and of comparatively recent introduction, and it was felt that any sudden change which would have for its effect to shorten and alter the periods of limitation for suits, would unsettle and confuse the minds of the Native community, and that the alteration itself as affecting a most numerous class of documents, such as pottahs, bonds, and notes of hand, might among a people who are slow to learn the changes of the law prove a source of considerable hardship. It has throughout been the desire of the Committee, while adhering to and preserving the principles upon which the original project of law was based, to make its application as little oppressive as possible, and to this feeling it has been found necessary to sacrifice in some degree the compulsory character of the registration. Acting upon this feeling also, it has been decided to alter those provisions of the Bill which would make the law applicable at once to the whole of India. For although there are no doubt advantages in making an Act of this kind universally applicable throughout India there were difficulties and objections to this course, which have induced the Committee to modify the provisions of the Bill in this respect, and to declare that in those territories which are not subject to the General Regulations, it shall be left to the Governor-General in Council and the local Governments to determine when the Act shall be brought into operation in those territories. The difficulties and objections to which I allude were that in some of the territories above described, such as British Burmah and the Central Provinces, portions of the country were in a condition to admit of the Bill being applied, while in other portions, the condition of the people was not such as to recommend the application of a measure designed to meet a more advanced state of civilization. In Mysore although the local authorities approved of the Bill, the Chief Commissioner thinks that it would be premature to introduce it at present, while other more pressing reforms in the judicial administration have only been recently set on foot, and required time before

they could be consolidated and enforced. On the other hand, in the Provinces of the Punjab and Oude there are already in existence systems of registration which, although differing from that prescribed in the Bill, are on the whole successful and suited to the present condition of these territories. It was thought therefore desirable not at present to disturb the existing arrangements, leaving it to the local Governments to determine when the provisions of the Bill now before the Council should be introduced. From what has been communicated from the Government of the Punjab and from Oude, it is probable that this period is not far distant, for many of the objections urged by the authorities of these provinces to the Bill as framed last year, will have been removed in the amended Draft of the Bill. It is very satisfactory to find that the registration as it exists in the Punjab and Oude, has steadily progressed in popular favor, and that even in the less perfect form which registration has assumed in those Provinces, it has done much to check fraud and to reduce litigation. As an instance of this I may mention that, in the city of Lucknow, out of 715 cases in which registered bonds were produced in evidence during the year 1862, there were only 7 cases in which the bonds produced were found unreliable. Among other alterations in the Bill, the Committee have agreed to the suggestions made to them to leave the local Governments entirely free in determining the Agency by which the proposed law is to be administered, and the method of their remuneration either by salaries or fees, or partly by salaries and fees. A Section has also been added providing for the convenience of persons transferring landed property when those persons are at a distance from the place where such property is situate, and may think it desirable to effect the registration of documents relating to such property at the Presidency Towns. It will be at the discretion of the Registrar General to allow of such registration before him. The history of the introduction of registration in Oude and the marked success which has attended it, show how much the success of a system of registration is dependent upon the care bestowed by the local officers under the direction of the Government on the first introduction of the measure into a province. Much of the success of the measure now before the Council will depend upon the exercise of a close supervision by the Registrar General upon whom it is proposed to appoint over the subordinate officers, and the selection of the lowest grade of these officials. In the careful choice of a respectable agency and in the multiplication of the Registration Offices so as to render registration easy, and, so to speak, to bring it close to every man's door, the popularity of the new law and its observance will greatly depend: and I trust that the local Government will not hesitate upon the first introduction of the measure to recommend, whenever necessary, a wise liberality in the payment of the lower Registration Agency, until such time as registration shall become self-supporting. I think we have every reason to anticipate the cordial co-operation of all the local

authorities, who have in their communications regarding the Bill shown so much hearty concurrence in its principles and in the necessity for such a law. It is probable, indeed we may consider it certain, that it will be found advisable hereafter to enlarge and extend the law now proposed to the Council, and it may hereafter be possible to extend to documents, the registration of which is now permissive, the compulsory Sections of the Bill. The Council will, I think, have reason for congratulation on passing a measure which, as has been described by my Hon'ble friend Mr. Maine, is almost "a condition precedent to any amendment of Civil justice in India," leaving to the future the amendment and enlargement of the law. If to any considerable extent the present law imposes a check upon the frequency of false suits and the systematic forgery of documents which is unfortunately so general throughout India, an immense benefit will have been conferred on the people of India, and that this will be the result of the measure now before the Council, I think we may confidently expect. I trust that as being in charge of this Bill, I may be allowed to express the great obligation the Council are under to my Hon'ble friends Mr. Harington and Mr. Maine, for the valuable time and labor they have bestowed in perfecting this Bill, and to them the largest portion of the credit due to its success will undoubtedly be owing."

The Hon'ble Mr. Maine said that the Bill had been so long before this Council and its predecessor, and before their Committees, and so many persons had successively had charge of it, that there was some danger, in giving any one person credit for it, of doing injustice to former Members of the Legislature. All, however, who had been associated with his Hon'ble friend Mr. Ellis, would testify to the zeal, patience, and sagacity which he had brought to bear upon the measure, and the Council and the public had much reason to be grateful to him for his labors. The Bill which had now come to maturity was one of which it was almost impossible to over-estimate the importance. Everybody who had turned his attention to the improvement of Civil Justice in India must have found his calculations baffled by one peculiarity of the country, the doubt which hung over the authenticity of all documentary evidence. So far as regarded one great class of documents, documents relating to real property, these doubts would shortly be dispelled through the operation of this measure. The modified compulsion to register other classes of documents which the Bill originally imposed, the Select Committee had not thought fit to insist upon, and on the whole he agreed with the Committee. In a country like this, where the vast mass of the population lived entirely by usage—and where the difficulty attending legislation was not so much that of passing laws as of promulgating them, of bringing them to the knowledge of the people—cruel injustice might

be done by changing anew the law of limitation, and hence he (Mr. Maine) concurred in the inexpediency of a double law. What importance belonged to that part of the Bill which provided for a voluntary registration, would now depend upon the Courts, which he ventured to think, would always require an explanation where a litigant might have registered a deed and had omitted to do so. He (Mr. Maine) however agreed with his Hon'ble friend that the measure must sooner or later go much further, and that a time would come when, on the production of any document in any Indian Court, the Court would at once have all reasonable certainty of its genuineness and authenticity. Besides these objects, another object of registration was to give purchasers of real property the means of ascertaining the existence of documents affecting the state of the title. How far the measure was efficient in that respect, would depend on the way in which its machinery was worked; and it would be the duty of the local Governments and of the Supreme Government to see that the Registers were kept in such order as to afford the utmost facility in the search for incumbrances. The Bill, as a whole, was one which the Council might fairly be congratulated on passing.

The Hon'ble Mr. Harington said of the several Members of the late Legislative Council for India who were present when the original Bill was introduced into that Council by Mr. Henry Forbes, the Member for the Presidency of Madras, he alone had the honor of a seat in this Council at the present time, and, consequently, he was the only Member of the Council who had had the opportunity of watching the progress of the Bill from the time of its introduction until, after passing through its several stages, it had at length been advanced to a state which admitted of their placing the Bill with confidence on the Statute Book of India. The Bill had been prepared with great care and ability by Mr. Forbes, in communication with the Judges of the late Sudder Adawlut at Madras, and in bringing in the Bill, Mr. Forbes had fully explained its provisions and the objects contemplated in its introduction. On Mr. Forbes' retirement from the service, the charge of the Bill devolved upon Mr. Ellis, and he was sure that they would all agree with him that the Bill could not have fallen into better hands. In presenting the first Report of the Select Committee on the Bill, Mr. Ellis took the occasion to pay a high and well-merited compliment to Mr. Forbes for the services rendered by him in connection with the Bill; but, with becoming modesty, Mr. Ellis made no mention of the prominent part taken by himself in carrying on the Bill and in settling its details. This omission had been well supplied to-day by Mr. Maine, who had borne testimony to the zeal, assiduity, and ability displayed by Mr. Ellis in bringing the Bill to maturity. He desired to express his full concurrence in what had been said by Mr. Maine in Mr. Ellis' praise, and he regretted very

much that the Council was so soon to lose the benefit of the Hon'ble Member's services. He (Mr. Harington) looked forward to the most satisfactory results from the operation of the present Bill. He believed that the Bill would have an important effect in checking fraud and forgery, and in diminishing litigation. It must be admitted that these were great benefits to be obtained by means of any legislative measure, and it was a satisfaction to him to think that for all time the names of Mr. Forbes and of Mr. Ellis would be honorably associated with the Bill.

OFFICIAL TRUSTEE BILL.

The Hon'ble Mr. Maine, in moving that the Report of the Select Committee on the Bill to constitute an Office of Official Trustee be taken into consideration, said that the only really material alteration made in the Bill was in respect of the rate of remuneration to be allowed to the Official Trustee, and he thought that on the whole the rates the Select Committee proposed to allow were the best.

The Motion was put and agreed to.

The Hon'ble Mr. Maine also moved that the Bill be passed with the amendments recommended by the Select Committee.

The Mot.on was put and agreed to.

LUCKNOW MUNICIPAL BILL.

The Hon'ble Mr. Maine, in moving that the Report of the Select Committee on the Bill to provide for the appointment of a Municipal Committee for the City of Lucknow be taken into consideration, said that there were two principal amendments made by the Select Committee. The one was as to the nature of the rates to be levied under the Act. An Octroi might not at all times be the best mode of taxation, and therefore the Committee of any Town other than Lucknow to which the provisions of the Bill might be extended were empowered to determine in what particular form rates should be imposed. The other great alteration in the Bill was the addition of a Section, under which the provisions of the Bill might be extended to any Town under the direct administration of the Governor-General in Council. It had been suggested to him by Mr. Temple that there were certain places in the Central Provinces and other Non-regulation Districts to which the Bill might with great advantage be extended. The Bill provided that the Governor-General in Council should declare who should be the *ex-officio* Members of the Committee in any place to which the Bill was so extended.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill be passed with the amendments recommended by the Select Committee.

The Motion was put and agreed to.

MIRZAPORE BILL.

The Hon'ble MR. HARINGTON moved that the Report of the Select Committee on the Bill to remove certain tracts of country in the District of Mirzapore from the jurisdiction of the Local Courts be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. HARINGTON also moved that the Bill be passed with the addition recommended by the Select Committee.

The Motion was put and agreed to.

MINORS' (BOMBAY) BILL.

The Hon'ble MR. ANDERSON moved that the Report of the Select Committee on the Bill for making better provision for the care of the persons and property of Minors in the Presidency of Bombay be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. ANDERSON also moved that the Bill be passed with the alterations recommended by the Select Committee.

The Motion was put and agreed to.

The Council adjourned.

CALCUTTA,
The 23rd March 1864.

A. G. MACPHERSON,
Offg. Depy. Secy. to Govt. of India,
Home Dept.

Government Central Press.—No. 818 L. D.—7-4-76.—50.

Abstract of the Proceedings of the Council of the Governor General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., C. 67.

The Council met at Government House on Wednesday, the 30th March 1864.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Honour the Lieutenant-Governor of Bengal.
Major-General the Hon'ble Sir R. Napier, K.C.B.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble Sir C. E. Trevelyan, K.C.B.
The Hon'ble W. Grey.
The Hon'ble R. S. Ellis, C.B.
The Hon'ble A. A. Roberts, C.B.
The Hon'ble H. L. Anderson.
The Hon'ble C. H. Brown.
The Hon'ble J. N. Bullen.
The Hon'ble Rajah Sahib Dyal Bahadoor.

SMALL CAUSE COURTS (PRESIDENCY TOWNS) BILL.

The Hon'ble MR. MAINE, in moving that the Report of the Select Committee on the Bill to extend the jurisdiction of the Courts of Small Causes in the Towns of Calcutta, Madras, and Bombay, and to provide for the appointment of an increased number of Judges of those Courts, be taken into consideration, said that, as a paper signed by one of the Judges of the High Court of Bengal had been circulated in connection with this Bill, he was extremely desirous of relieving himself from any imputation of disrespect to the High Court in having submitted to the Council a measure affecting the Court's jurisdiction without having asked its opinion. The facts were these. On August the 4th, 1862, that is about a year and a half ago, the opinion of the High Court was solicited on two points. One was whether the Small Cause Courts of the Presidency Towns should be placed under the general superintendence of the High Court, as are the Small Cause Courts of the Mofussil. The other referred to a suggestion of Her Majesty's Government

which struck him (Mr. Maine) as more serious than the proposal of the Bill; it was whether the exclusive jurisdiction of the Presidency Small Cause Courts, or in other words the jurisdiction which absolutely excluded and shut out the jurisdiction of the High Court, should not be raised from Rs. 100 to Rs. 500. To the first of these questions, Mr. Justice Norman had now replied in the affirmative, but in apparent ignorance that he was answering a question. To the second question no reply had been received. Now he (Mr. Maine) must not be understood as for a moment complaining of the High Court. He knew that the demands on their time had been enormous, and he was not stating his impression too strongly when he said that he believed them to have made the most of every minute of their time. But still it had become obvious that no very speedy reply to requests for its opinion could be looked for from the Court; and that in the present case there was urgent necessity for speedy legislation, he (Mr. Maine) thought that he could convince the Council. The history of the Bill had been partially given a fortnight ago. Last autumn, a Bill extending the jurisdiction of the Bombay Small Cause Court to Rs. 1,000 was passed by the Bombay Legislature and sent to the late Lord Elgin for his assent. The Viceroy vetoed the Bill, having been advised that a peculiarity of the Letters Patent, of which all the consequences had not perhaps been foreseen, prevented the local Council from passing such a measure. But, at the same time that he signified his veto, Lord Elgin pledged himself that a similar Bill should be introduced into the Viceregal Council. As soon, however, as the matter came to be enquired into, it appeared that there were strong reasons for extending the provisions of the Bill to the other two Presidency Towns. He (Mr. Maine) ascertained that, when the old Calcutta Court of Requests was abolished, the original wish of the mercantile public had been that the new Court of Small Causes should have jurisdiction up to Rs. 1,000, and the contemporary papers seemed to show that the jurisdiction was only limited to Rs. 500 because the measure was regarded as tentative. Since that time, there had been a series of memorials in favour of extending the jurisdiction to the amount originally intended, and it was no doubt in consequence of strongly expressed feeling that a Bill closely resembling the present had been introduced into the Council of the Lieutenant-Governor of Bengal. The Lieutenant-Governor would be able to state his own impression, but from all he (Mr. Maine) had learned, he imagined the Bill, in some form or other, would have been carried, so to speak, by acclamation. It could not, however, be proceeded with on account of the same defect of legislative power which impeded the Bombay measure. Whether the like Bill had been introduced into the Madras Council, Mr. Maine could not say; but as the Madras Government had telegraphed their approval of the present Bill, they had probably only abstained (if they had abstained) from moving in the matter,

because they were cognizant of their incompetence to deal with it legislatively. When, therefore, Mr. Justice Norman, passing from the singular to the plural, observed "we think it inconvenient that Bills of such general importance as the one in question should be passed without being published in the Gazette a sufficient time to enable the public to express their opinion upon the proposed alterations of the law," he could not be aware that this was an old Bengal Bill which had been published in the Calcutta Gazette two years ago, that it had been discussed in the Bengal Council at intervals during three quarters of a year, and that a strong current of public opinion had been running in its favour for more than twenty years. Mr. Maine would now pass to the specific points of difference between himself and the learned Judge. In the first place, Mr. Justice Norman seemed to complain that the Bill departed from the example of the English County Court Acts. Now among many advantages which might be looked for from bringing English legal opinion to bear on Indian law, there was one danger to be apprehended, the abuse of English analogies. He (Mr. Maine) affirmed without hesitation that there was no true analogy whatever between the relation of the English County Courts to the Courts at Westminster Hall, and the relation of the Presidency Town Small Cause Courts to the High Courts. The difference between trying a case in a County Court and trying it in Westminster Hall was the same thing as the difference between trying it before a single Judge and trying it before a Judge and Jury; and as nobody who had ever seen a civil case involving facts tried by a Jury would entertain a moment's doubt of the superiority of that tribunal, the English Legislature was naturally chary and hesitating in the transference of jurisdiction from Westminster Hall to the County Courts. It was reluctant to deprive the suitors of the option of resorting to a mode of trial at once popular and most effectual. But civil cases in the Indian High Courts were tried, as everybody knew, by single Judges; and hence the difference between taking a case into those Courts or the Small Cause Courts amounted simply to the difference between trying it before a single High Court Judge and trying it before a single Small Cause Court Judge. Now, of course, he (Mr. Maine) need hardly say that the opinion of the High Court on a question of law was to be preferred to the opinion of the Small Cause Court; but that was met by the Bill, which provided for a virtual appeal on points of law. But when questions of fact had to be discussed, it by no means followed that a higher degree of legal knowledge and legal ingenuity conferred a corresponding superiority in dealing with them to that which it conferred when law had to be applied. The principle which underlay the whole English system of administering civil justice was, that average capacity and average integrity and average good sense were sufficient for the solution of questions of pure

fact. Who then would venture to say that these Small Cause Court Judges—of whom no complaint was made—who were engaged in solving questions of fact all day long—who were thoroughly used to native character and native evidence—who, several of them, spoke the vernacular language—who under the amended Bill would have the advantage of Counsel before them—were unequal to disposing of the generally simple class of cases to which their jurisdiction was restricted, subject to correction by the High Court on questions of law, usage, and the admissibility of evidence? If the Council would be good enough to look at Section XII of the amended Bill, they would see a provision empowering the first Judge of the Small Cause Court, who was always, it should be remembered, a Barrister, to distribute the business among the Judges as he should think fit. The principal object of that provision was to enable him to determine in his own branch of the Court all the more difficult suits which might be instituted under the present Bill. What grounds were there for supposing that he would not be competent to dispose of them satisfactorily? The question might be tested by reference to a gentleman whose legal knowledge and acuteness had been abundantly proved to the Council. Three years ago Mr. Macpherson was first Judge of the Small Cause Court, and there was no reason to believe that other first Judges were ever likely to be his inferiors; the other day His Excellency placed Mr. Macpherson on the Bench of the High Court, and the remainder of the Judges would be the first to admit that he was a worthy colleague. It appeared to him (Mr. Maine) that those who maintained the necessary inferiority of Small Cause Court judgments to High Court judgments were bound to maintain the necessary inferiority of the decisions of Mr. Macpherson to the decisions of Mr. Justice Macpherson. So much for the calibre of the Judges. As to procedure, was it true that a trial before the High Court presented in all respects the same security for justice which was furnished by enquiries before the Small Cause Court? He (Mr. Maine) disclaimed all sympathy with those who considered that the introduction of the Code of Civil Procedure on the Original Side of the High Court was a retrograde measure, but no doubt the change had one unfortunate effect in subjecting the original jurisdiction to the system of Regular Appeals, which had its sole justification in the condition of the Indian judicial body in the Mofussil. It might thus happen—at all events, in theory—that the decision of a Judge like Sir Barnes Peacock on a question of pure fact, a decision arrived at after observing the demeanour of the witnesses, and hearing the story from their own lips, might be reversed by a Bench of Judges, who labored under the really incalculable disadvantage of merely gathering the evidence from paper. It was a point of positive advantage in the Small Cause Court that its decisions on facts were not subject

to review on a mere paper appeal. Perhaps, however, although some of Mr. Justice Norman's expressions seemed to point to a wider divergence of view, the only real difference between himself and the learned Judge was on the question of concurrent jurisdiction. On this point he was quite ready to give way if the feeling of the Council was against him, but he must beg the Council to attend to the true issue. His Bill permitted a suitor to go freely into the High Court for claims under Rs. 1,000 and it further permitted him, if successful, to obtain his costs, if only the Judge who tried the case would certify that it was a proper case for trial in the High Court; in other words, if the Judge, when the trial was over, would take his pen and write a dozen words on the back of the record, which would show that the plaintiff had not vexatiously endeavoured to harass the defendant by bringing him into the more expensive Court. Mr. Norman, however, thought that a plaintiff ought to have his costs unconditionally. The difference, therefore, would seem to be that, whereas he (Mr. Maine) wished the plaintiff to have his costs when the action was properly brought, the learned Judge desired he should have them even when the action was improperly brought. That the learned Judge's opinion was nothing less than this, would appear from the breadth of the basis on which he rested it. "The great principle," he said "was that any interference with the right of the subject to choose his own tribunal is undesirable." Now, far be it from him (Mr. Maine) to deny the right of the subject to spend any money he pleased upon luxurious forms of litigation, provided only that the money came out of the subject's own pocket; but what he objected to was that the defendant should be made to pay for the indulgence of this taste. Unsuccessful defendants were entitled to consideration no less than successful plaintiffs. The true principle was one which, he feared, could not be connected with anything so magnificent as the liberty of the subject; it was that every litigant, though he should be in the right, was bound to enforce his rights *civiliter*, with reasonable moderation. A plaintiff was entitled to have his rights against the defendant who had wronged him, or contracted with him, but he was only entitled to have them with the least possible expense, and annoyance, and vexation to the defendant. It was, of course, true that this vexation and expense were less, now that the High Court was established, than they were in the days of the old Supreme Court. But the balance of expensiveness, as between the High Court and the Small Cause Courts, was still heavily against the High Court; for, although the mere Court expenses had certainly diminished, the rate of professional remuneration had largely increased, if Mr. Maine had not been misinformed. But the chief advantage was that, after all, after a decree had been obtained, there hung over the suitor the menace of a Regular Appeal; and though these appeals had not at first been frequent, probably

owing to the new procedure not being fully understood, he feared they were becoming commoner, and would multiply every year. Mr. Maine, therefore, still preferred the present form of the Bill, but he would readily give way if the sense of the Council was not strongly in his favour. In truth, he deprecated the point being decided either by his own authority or Mr. Norman's. It was possible that the learned Judge, from his position, was too much under the influence of one besetting sin of lawyers; it was equally possible that he (Mr. Maine), from the nature of his duties, was too much on his guard against it. Among many false charges brought against the legal profession, they were open to one which was true—that they were always over-anxious to have the ends of justice obtained by what he might call too artistic a process. They were apt to prefer what the Advocate General called in a paper that had been circulated "the superior article" to merely serviceable ware. Their tendency was always to employ machinery too fine and delicate for their object, and he confessed he saw no better corrective of that tendency than the obligation which this Bill would throw on the Judge who tried the cause to certify that there were reasons for bringing it in the more expensive Court.

The Honorable Mr. Roberts would draw the attention of the Council to what, notwithstanding what had been said by the Honorable and learned mover, he would call the extraordinary haste with which this Bill had been brought to its present stage. On the 16th of March it had been introduced into the Council after the suspension of the Rules, and within two weeks the Council were about to be asked to pass the Bill. No reasons had been assigned for this great haste. The Bill was avowedly founded on the desire of the public for the extension of the jurisdiction of the Small Cause Court. That desire in his opinion had not been shown. Neither in the statement of the Objects and Reasons, nor in the argument of the Honorable Member, was there anything to show that the public wanted such an enactment. Allusion had been made to similar Bills which had been introduced into the Councils of the Governor of Bombay and of the Lieutenant-Governor of Bengal; but that was two years ago, when the Supreme Courts existed, and when the expense and the delay in the decision of suits were great. The Honorable and learned mover had not sufficiently allowed for the improvement in these respects since the establishment of the High Court and the adoption by it, in its original jurisdiction, of the Code of Civil Procedure. In the Bengal Administration Report for 1862, it was stated,—

"The number of suits instituted in the Calcutta Small Couse Court during the year was 33,581, and the amount of property under litigation was Rs. 10,54,228. In the previous year the results were 33,224 suits for property amounting to Rs. 11,19,418. The decrease in

the value of property under litigation during the year under review was partly attributable to the adoption of similar procedure in the original jurisdiction branch of the High Court, which has left less inducement to litigants to adopt, on grounds of cheapness and despatch, the plan of foregoing a portion of their claim to bring it within the jurisdiction of the Small Cause Court."

When the Bill referred to by the Honorable Member had been introduced into the Council of the Lieutenant-Governor of Bengal, one of the principal reasons urged for the passing of the Bill had been that in many cases large sums had been abandoned for the purpose of bringing the amount claimed within the limits of the jurisdiction of the Small Cause Court. But during the period of 11 months from 1st May 1863 to 10th of the present month of March there had been only 35 cases in which sums in excess of the limit of Rs. 500 had been abandoned by claimants, and in only seven of those cases did the amount abandoned exceed Rs. 100. He therefore concluded that the public were not now driven, as they formerly were, to the Small Cause Courts, and that the great reason for the desire formerly shown for the increase of the jurisdiction of that Court no longer existed even in Calcutta. There were, in fact, no sufficient data before the Council for making the proposed extended jurisdiction conpulsory. The only memorial that he could find on the subject was from the Calcutta Trades Association, and was annexed to the Bill brought into the Bengal Council in 1862. It was dated so far back as 1851, when a very different state of affairs existed. It appeared to him that before the Council made the jurisdiction compulsory, the Governments of Madras and Bombay, the Judges of the High and of the Small Cause Courts, as well as the public of those Presidencies, should have an opportunity of expressing their views upon the subject.

The Honorable Mr. Harington said that it was certainly the case that the Bill had been but a short time before the Council, and that it had not been published for the usual time; but he considered that Mr. Maine had given good and sufficient reasons for the Rules of the Council having been suspended in order to admit of the early passing of the Bill. As noticed by Mr. Maine, the Bill was really not a new Bill, and it could not, he thought, be said that the public had been taken by surprise by its introduction. Bills having the same object in view had been introduced some time ago into the local Councils of Bengal and Bombay. These Bills had been published for the usual period. He believed that no objection had been made to the Bombay Bill. When the Bengal Bill was under consideration, it was suggested that, as regarded the larger jurisdiction which the Bill proposed to give to the Small Cause Court at Calcutta, plaintiffs should have the option of taking their suits into that Court

or into the High Court without any risk of losing their costs in the event of their succeeding in their action; but he did not know that there was any general feeling in favour of a provision to this effect. A fortnight had elapsed since the present Bill was introduced, and so far as Calcutta was concerned, there had been ample time for that portion of the community, which was most interested in the Bill, to petition against it, if they objected to its provisions; but the only communications which had been received on the subject of the Bill were from one of the learned Judges of the High Court and two other gentlemen connected with that Court, whose objections to the Bill had, he thought, been fully met by Mr. Maine. He saw no reason, therefore, why they should not proceed with the Bill, and pass it through its remaining stages.

The Honorable Mr. Maine said that the Council would do him the justice to remember that when he had introduced the Bill, he had expressly said that it was a measure on which he considered local opinion to have been pronounced, and which he believed that the local Councils would certainly have passed but for an accidental want of legislative power. He had never pretended that sufficient time had been given to discuss it, if it had been a Bill introduced into this Council on the ordinary footing. But, as he had stated, it was actually published in Calcutta in December 1862. Since Mr Justice Norman's letter had been received, he had done his best to ascertain the views of the trading community on the Bill, but had not succeeded in discovering a single objector to its principle. There was certainly some difference of opinion as to the mode and degree in which the jurisdiction should compete with that of the High Court, but no difference of opinion whatever as to the principle of extending the jurisdiction. Unless the Members of Council who represented the mercantile community desired delay, he saw no reason for postponement.

The Motion was put and agreed to.

The Honorable Mr. Harington moved the following amendments, of which notice had been given:—

Section II, line 6, after the word "demand" the introduction of the words "exceeding the sum of five hundred Rupees but".

Line 10. The omission of the word "and" before the word "The" and the introduction of the words "provided that the cause of action shall have arisen or the Defendant at the time of bringing the action shall dwell or carry on business or personally work for gain within the local limits of the jurisdiction of the Court."

He said the first amendment was merely a verbal one. The object of the proviso, which formed the subject of the second amendment, was to place the jurisdiction of the Courts of Small Causes, in respect of the cases to which it was now proposed to extend their cognizance, on precisely the same footing as the jurisdiction of the High Courts under the letters patent from which the words of the proviso had been taken.

The Motions were severally put and agreed to.

The Hon'ble Mr. Roberts moved that the following section be introduced :—

"If both parties shall agree, by a Memorandum signed by them or by their Attornies and filed with the Clerk of the Court of Small Causes that the said Court shall have power to try any action (not included in the proviso in Section XXV of Act IX of 1850), in which the sum sought to be recovered shall exceed the sum of one thousand Rupees, then and in such case the said Court shall have jurisdiction to try such action."

He said that such a provision existed in both the Bengal and Bombay Bills, and should the Bill now before the Council be passed, he thought that, when parties consented, there should be no limit as to amount to the jurisdiction of the Small Cause Court.

The Motion was put and agreed to.

The Hon'ble Mr. Harington then proposed that the latter part of Section II, after the words in a parenthesis, should form a separate Section, with the following amendments :—

Line 16. The omission of the word "not" after the word "Courts."

Line 17. After the word "of" the substitution of the words "five hundred" for "one thousand."

and that the Section so formed should follow Sections V and VI, which equally with the early part of Section II proposed to enlarge the present jurisdiction of the Small Cause Courts in the three Presidency Towns. He would suggest that the Section introduced on the motion of Mr. Roberts should follow Section II. He would also suggest that the words "the debt or damage claimed or value of the property in dispute, whether on balance of accounts or otherwise" be substituted for the words "the sum sought to be recovered" in the new Section proposed by Mr. Roberts. The words

proposed to be substituted would show clearly that the new Section was intended to apply only to cases of the description referred to in the present Small Cause Court Act (IX of 1850), not to cases of real property which, whatever might be the value of the property in dispute, could now be heard only in the High Courts. He believed that it was not intended that the proposed new Section should extend to cases of this description. He thought that the present Sections V and VI should follow Mr. Roberts' new Section. They would then be numbered IV and V, and the latter part of Section II, which he had proposed should form a separate Section, should follow as Section VI of the Bill. This arrangement of the Sections would prevent any doubt arising as to the application of the new Section VI to the cases falling under the preceding four Sections.

The Motions were severally put and agreed to.

The Hon'ble Mr. Roberts moved that Sections VII and VIII be omitted. He observed that the effect of this amendment would be to leave the jurisdiction of the Courts, as now, up to Rs. 500, and to give them a concurrent jurisdiction with the High Courts in suits above that amount. He (Mr. Roberts) would not follow the Hon'ble and learned framer of the Bill into a discussion of the comparative merits of the two descriptions of Courts or of their Judges. He would only observe that all that the Council had before them was, on one side, the opinion of the Hon'ble and learned Gentleman for making the proposed extended jurisdiction compulsory, while they had, against it, the opinion of the Hon'ble Mr. Justice Norman and of the Advocate General. When the Bill was before the Bengal Council, his Hon'ble friend Mr. Bullen and the late Baboo Ramapershad Roy opposed the proposition to make the extended jurisdiction compulsory. The only expression of public opinion which he had been able to find was an extract from a Memorial from the Calcutta Trades Association, dated so far back as 26th July 1851, when the Small Cause Courts were first established. It was therefore his opinion that until the present state of public opinion at all the Presidencies could be ascertained, the Council would not be justified in making the extended jurisdiction compulsory, and he therefore proposed the omission of Sections VII and VIII.

The Hon'ble Mr. Bullen concurred with what had been said by the Hon'ble Member. It could not be denied that the heavy lists of the Judges of the Small Cause Courts showed that they could not bring to the consi-

deration of cases the time and care which would be bestowed upon them in the High Court. The Hon'ble Member who had introduced the Bill had gone beyond what he (Mr. Bullen) understood the mercantile community to have asked for.

The Hon'ble MR BROWN desired to express his support of the Bill as it was amended by the Committee. In his opinion it was calculated to prevent suitors from unnecessarily resorting to the more expensive mode of litigation, while at the same time it would not prevent them from taking proceedings in that mode under circumstances which might warrant their so doing.

The Hon'ble MR. HARINGTON said he did not attach any very great importance to the retention in the Bill of the two Sections which Mr. Roberts had moved should be omitted. It should not, however, be overlooked that the Sections proposed nothing new. They merely extended the provisions of the existing Act for constituting Courts of Small Causes in the Presidency Towns to the cases of larger amount which would be cognizable by those Courts, should the present Bill become law. This fact was in favour of the retention of the Sections. The principal object of the present Bill was to enlarge the jurisdiction of the Courts to which the Bill related, leaving the procedure to be observed in disposing of the cases which their enlarged jurisdiction would enable those Courts to try, and generally all other matters, except as to stating cases for the opinion of the High Court, and as to the amount of the institution fee, as in the cases now cognizable by them. Under the Code of Civil Procedure, the question of the apportionment of the costs which under the old law, he believed, ordinarily followed the event, or were made payable by the losing party, was left entirely in the discretion of the Court. Section 187 of the Code said "the judgment shall in all cases direct by whom the costs of each party are to be paid, whether by himself or by another party, and whether in whole or in what part or proportion, and the Court shall have full power to award and apportion costs in any manner it may deem proper." If, therefore, Sections VII and VIII were struck out of the Bill, it would still be within the competency of the Judges of the High Court, acting on the discretionary power given by the Section of the Code which he had quoted, to decline to give a successful plaintiff his costs in a case exceeding in amount Rs. 500, but not exceeding Rs. 1,000, which had been needlessly instituted in the High Court, instead of in the Court of Small Causes, on the ground that the case was one which ought to have been brought in the Small Cause Court,

and probably this was what would generally be done. It was rather in the interests of the plaintiffs that he would advocate the retention of the Sections. They would serve as a warning to plaintiffs that if they subjected the defendants to the heavier costs of the High Court by bringing suits in that Court, which ought properly to be brought in the Court of Small Causes, they would do so at their peril as regarded their own costs.

The Hon'ble MR. MAINE said that in reference to what had fallen from the Hon'ble Mr. Bullen, he was aware that some persons who were in favour of the Bill desired an absolute concurrence of jurisdiction with the High Court. Doubtless if the interests of plaintiffs were solely considered, there would be nothing to be said against that arrangement, but if the principle were recognised that a plaintiff must not put the defendant to more expense than was absolutely necessary for the enforcement of his rights, the present form of the Bill was to be preferred. He should not press the point unless he had the Council decidedly with him.

The Motion having been put, the Council divided—

AYES.	NOES.
Hon'ble Mr. Roberts.	The Hon'ble the Lieutenant-Governor.
" " Bullen.	Hon'ble Sir R. Napier.
	" Mr. Harington.
	" Sir C. Trevelyan.
	" Mr. Grey.
	" " Ellis.
	" " Anderson.
	" " Brown.
	" Rajah Sahib Dyal.

So the Motion was negatived.

The Hon'ble MR. MAINE did not vote.

The Hon'ble MR. MAINE then moved the following amendments, of which notice had not been given:—

Section VII.—The omission of the words "on the back of the record" in lines 22 and 23.

Section XII.—The omission of the words "and assistant Judges" in lines 12 and 13.

The Motions were severally put and agreed to.

The Hon'ble MR. MAINE having applied to His Excellency the President to suspend the Rules for the conduct of business,

The President declared the Rules suspended.

The Hon'ble MR. MAINE then moved that the Bill be passed with the amendments recommended by the Select Committee and those now adopted.

The motion was put and agreed to.

CALCUTTA MAGISTRATES' JURISDICTION EXTENSION BILL.

The Hon'ble the Lieutenant-Governor of Bengal, in moving that the Report of the Select Committee on the Bill for the extension of the jurisdiction of the Magistrates of Police in Calcutta be taken into consideration, said that the Report explained the nature of the changes they proposed in the Bill. It was thought that two of the Sections of Chapter XIV of the Penal Code should be omitted, as the offences defined in them were not strictly in the nature of nuisances. A clause was added to enact expressly that if the Magistrates thought any offence deserving of a higher punishment than they could inflict, they might commit the offender to the High Court. Lastly, the Committee had altered the definition of the word Magistrate, so that the powers of a Magistrate under the Bill would only be exercised by persons specially authorized by the Local Government.

The Hon'ble SIR R. NAPIER said, that he had had some doubt regarding the Bill for extending the jurisdiction of the Magistrates of Police in Calcutta, lest it should lead to the punishment of some unconscious and involuntary offenders, but those objections had been removed by the amendments to the Bill, one of which reserved to the Lieutenant-Governor the selection of the Magistrates on whom the extended powers were to be conferred. He had recently passed through a District of Calcutta, not more than half a mile from Government House, the condition of which would justify stronger language than that of Mr. Strachey, if it were possible for language to be stronger. It was apparent that no individual efforts could be of any use in improving the present condition of the city. If any one was to blame for the condition of Calcutta, it was first the Supreme Government, honorably excepting the Viceroy, all the Lieutenant-Governors of Bengal, and the old Municipal Commission. Nothing but the vigorous action of Government could do any good. It appeared to him that the proper course for the Municipal Commission to follow was to

borrow money at once to complete the new drainage, to employ a part of their income to pay the interest of the debt, and to form a sinking fund for its gradual repayment; and to apply the remainder for the employment of large working parties, together with chemical appliances, for the immediate cleansing of the city. He should vote for the Bill.

The Hon'ble the Lieutenant-Governor said that he quite concurred with what had been stated by the Hon'ble Member, and added that now the inhabitants had consented to tax themselves largely for purposes of conservancy, there were great hopes that the work of improvement commenced would be carried out by the Municipal Body and the able Officer who presided over it.

The Motion was put and agreed to.

The Hon'ble the Lieutenant-Governor then moved that the Bill as amended, be passed.

The Motion was put and agreed to.

MILITARY CANTONMENTS BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill to regulate the administration of Civil and Criminal Justice, and the superintendence of Police and Conservancy within the limits of Military Cantonments, be taken into consideration. He said that as it was desirable that the discussion should be narrowed as much as possible, he would not make any observations unless the course of the debate seemed to require it.

The motion was put and agreed to.

The Hon'ble MR. ROBERTS then moved the following amendment, of which notice had been given:—

Section XI.—The omission of the last eight lines after the words "such Force." He said that the Section as it stood would place the District Superintendent of Police under the general control and direction of the Commanding Officer of a Cantonment. This appeared to be a contravention of that provision of Act V of 1861 which gave such control and direction to the Magistrate of the District. The Bill preserved intact all the powers of the Commanding Officer in respect of Military matters; but as in respect of civil judicial matters, the Commanding Officer would have no control or

authority over the Cantonment Magistrate, so in purely civil matters he should have no power over the Police. Since the introduction of the new Constabulary under Act V, 1861, into the large Cantonments in the Punjab, the Commanding Officers had exercised no authority over such Constabulary, and he (Mr. Roberts) recommended that the uniform system provided for by Act V, 1861, and as already in practice wherever the new Police had been introduced, both in the Punjab, and, he believed, in the North-Western Provinces, should be maintained.

The Hon'ble Mr. HARINGTON said the Section to which the present motion related had given rise to more discussion and to greater differences of opinion than all the other Sections of the Bill put together. Many reasons had been urged, both in favour of the Section as it had been settled by the Select Committee, and in support of the objections taken to that part of the Section which it was now proposed to omit. He had carefully considered the arguments which had been brought forward on both sides of the question, and the conclusion at which he had arrived was that the arguments in favour of the Section, as it stood, greatly preponderated. In coming to this conclusion, he had allowed great weight to the fact that the Section, as framed, would maintain in some degree the existing laws in the Presidencies of Bengal, Madras, and Bombay, whereas the Section, if altered as proposed, would have the effect of entirely abrogating those laws. It appeared to him that in moving the present amendment, Mr. Roberts could not have sufficiently adverted to the large powers which the existing laws of the three Presidencies conferred on Commanding Officers in respect to the Police employed in Military Cantonments and Bazars. Regulation III of 1809 of the Bengal Code commenced by saying "under the existing Regulations, the charge of the Police in the Cantonments and Military Bazars is vested in the Magistrates and their Officers. This arrangement having, however, in some instances, been attended with inconvenience, the following rules have accordingly been passed for the more effectual support of the Police in places of that description." The rules which followed vested the support of the Police and the maintenance of the peace within the limits of the Cantonments and Military Bazars in the Officers Commanding the Troops quartered at such places. Section 3, Regulation VII of 1832 of the Madras Code said, "Police authority and the maintenance of the peace shall be vested in the Officer Commanding at all Stations which shall be designated as Military Bazar Stations," and Section 23, Regulation XXII of 1827 of the Bombay Code, provided "that the Superintendent of Bazars should, under the immediate authority of the Commanding Officer, perform the duties assigned to him in the Regulation, and that the Superintendent should have

charge of such establishment for maintaining order and convenience within the limits of the Cantonment and enforcing rules established for that purpose by the Commanding Officer, subject always to the control of Government, as might be placed at his disposal." It was worthy of remark that the Regulations which he had just quoted were not passed by the same Legislature or at one time. They were passed by different Legislatures at different periods. They must assume that the Legislatures which passed these Regulations were fully satisfied, at the time they passed them, of their necessity and propriety. Furthermore, it was to be observed that the preamble to the Bengal Regulation showed that the system of making the Police of Military Cantonments and Bazars entirely independent of the Commanding Officer had already been tried in Bengal, and had been abandoned in consequence of the inconvenience with which the arrangement had been attended. Prior to the passing of Regulation III of 1809 of the Bengal Code, the charge of the Police in Military Cantonments and Bazars in Bengal was vested in the Magistrates who were at that time at the head of the Police of their respective Districts; but they were told in the extract from the Regulation which he had read, that it had been found necessary to resort to the aid of the Commanding Officers for the more effectual support of the Police and the maintenance of the peace in Military Cantonments and Bazars. The Madras and Bombay Governments, taking warning from what had occurred in Bengal, had, in the laws passed by them some years subsequently, followed the course of the Bengal legislation, which transferred the charge of the Police in Military Cantonments and Bazars from the Magistrate to the Commanding Officer. With these facts before them, it seemed to him that they would not be justified in repealing the existing law, and in entirely ousting the jurisdiction of the Commanding Officers in respect of the Police employed in Military Cantonments, unless it could be shown that the necessity which had led to the enactment of the Regulations to which he had referred, and which were still in force, anything contained in Act V of 1861 notwithstanding, had ceased to exist, or that the powers conferred by those Regulations on Commanding Officers of Military Cantonments had been abused, or that Commanding Officers were no longer fit to be entrusted with such powers, or that practical inconvenience had been found to result from the operation of the laws which vested Commanding Officers with them. He submitted that Mr. Roberts had not established the necessity for the change of the present law which was now proposed by him on any of these grounds. Looking to the position of Commanding Officers in Military Cantonments, to the duties which devolved upon them, and to the number and various classes of persons over whom their authority extended, it seemed to him impossible to ignore the existence of those Officers in the

Police arrangements of Military Cantonments, or to make the Police entirely independent of the Commanding Officer, and to declare that he should have nothing to do with the Force. Whatever they might do in the way of legislation, they could not divest the Commanding Officer of all responsibility in respect to the maintenance of the peace in the Cantonments under his command. If the present motion should be adopted, and a disturbance having occurred in a Cantonment, the Commanding Officer should abstain from interfering for its suppression on the ground that he had nothing to do with the Police, and that he had no power to exercise any direction or control in respect to that Force, he apprehended that the excuse would not be admitted either by the Commander-in-Chief or by the Government; but it appeared to him that it would be very unfair to Commanding Officers to leave them subject to responsibility, and, at the same time, to deprive them of the means of fulfilling the obligations which their position and the nature of their duties imposed upon them. For these reasons he should oppose the motion and vote for the Section as it stood.

The Hon'ble SIR C. TREVELYAN said that there were strong reasons for confining the exercise of Police powers to the Constabulary. The local Superintendent of Police would necessarily have made Police matters his peculiar business, while a Commanding Officer was appointed with reference to qualifications entirely different. A Military Officer might be qualified for such duties, but it would be an accident whether he were so or not, and it would not be right to impose such responsibility upon him. The laws cited by Mr. Harington had been passed before the present highly organized Constabulary Force was established, and might now be considered obsolete. The Section, as it stood, would tend to a conflict of authority between two Departments of the Public Service, and to the introduction of a double administration. At Madras, as well as in the Punjab, the Cantonment Police formed part of the undivided charge of the District Superintendent of Police, and the arrangement worked very well. At home the same practice was universal, and even at Aldershott and the Curragh, where there were large assemblages of troops of all arms on the Indian principle, the Military Officers confined themselves to their own duties, and the Police was managed by detachments from the Surrey Police and the Irish Constabulary. The principle of preserving the distinction between the Civil Police and the Military Force was a very important one, and ought not to be lightly departed from. He (Sir C. Trevelyan) had stated what was the opinion of the Government of Madras when the new Constabulary was first established, and what had been the subsequent practice. The Hon'ble Mr. Harington had said that the present Government

of Madras had intimated by telegraph its approval of this clause of the Bill, but on examining the telegram, it would be seen that the question upon which the Government of Madras gave its opinion was, whether the Cantonment Police should be managed by the District Superintendent or the Cantonment Magistrate, and had nothing to do with the Commanding Officer.

The Hon'ble Sir ROBERT NAPIER said that three arguments had been brought forward against the original section of the Bill which placed the Police Officer in Cantonments under the general control of the Commanding Officer. *First.*—The Hon'ble Mr. Roberts considered that the Police Officer should be independent of the Commanding Officer, because a similar system had worked well in certain Cantonments in the Punjab. *Secondly.*—The Hon'ble Sir C. Trevelyan thought that there would be a conflict of authority, because Commanding Officers would interfere with the details of the Police, and that they would know nothing about them. *Thirdly.*—The same Honorable Member was of opinion that the complete separation of the Civil Police from Military Authority was most successful in England and Ireland. He could not admit the sufficiency of these arguments. He could not admit that a system which had worked well in general use should be changed because a different one had succeeded in a few stations in the Punjab. No doubt the independence of the Police Officer might have worked well under special circumstances at a few stations, but according to his own experience, whenever there had been any difficulty, it had arisen from the Police Officer endeavouring to disregard the authority of the Commanding Officer. There was the example of two Officers in Cantonments similarly situated to the Police Officer. The Executive Engineer carried on his work in Cantonments, under a complicated set of departmental rules, and under several departmental masters, but in strict subordination to the Commanding Officer. In like manner the Commissariat Officer was guided by his departmental rules, and subordinate to his departmental superiors, and yet he conducted his duty under the general direction and control of the Commanding Officer, without any difficulty. With regard to the objection of his Hon'ble friend, Sir C. Trevelyan, that Commanding Officers would know nothing of Police duties, he thought that could hardly be admitted for the future, because there were a great many Officers now serving in the Police; but, so far from thinking it an advantage, he thought it not at all necessary, that the Commanding Officer should know, or interfere with, the details of the Police duties. All that was required was that the Police Officer should conduct his duties in general subordination to the Commanding Officer, but according to his own special regulations. The situations of bodies of Troops in Eng-

land and India were totally different. In India, the troops were not placed in the midst of large civil populations as in England; and, however perfect his Hon'ble friend might consider the Indian Police, it could hardly be compared with that of England or Ireland. The Cantonment of India was a standing camp, and the long military experience of England had shown that, with a detached military body, whether contained in a ship of war at sea, or a camp on land, the Military Commander must have the complete and supreme authority. On this ground he supported the original section of the Bill.

The Hon'ble MR. ROBERTS thought that the Hon'ble Mr. Harington's arguments were based upon a wrong assumption, and without due advertence to the force of Act V. 1861. Mr. Harington assumed that the Police described in the old Cantonment Regulations of 1803, 1810, and 1832 would be continued, but wherever Act V. 1861 was introduced, the new Constabulary entirely superseded and set aside the Bazaar Police mentioned in the old Regulations. Those Regulations were becoming obsolete. He (Mr. Roberts) had consulted two General Officers, one of whom was in command of a Brigade, and they were both of opinion that the Commanding Officers need not, and should not, have anything to do with the Civil Constabulary. He had also consulted the Inspector-General of Police in the North-Western Provinces and in the Punjab. Both were opposed to the Section as it stood. He would read from the letter from the Inspector-General of Police in the Punjab, which was among the printed papers, and which referred to the Bill as it was first framed, a description of the manner in which the new Police had been introduced into Cantonments and how it acted:—

I would therefore suggest in modification of Section VI that the Police in Cantonments should be under the control and supervision of District Superintendents, but that the actual head of the Cantonment Police (a European Inspector) should be subordinate to the Cantonment Magistrate in the same manner that District Superintendents are subordinate to the Magistrate of the District. This would not encroach in any way on the authority of either Commanding Officer or Cantonment Magistrate, for the Police would be subordinate to the Magistrate in every point contemplated in the Act, save departmental supervision. What I have now proposed has been tested, and we have already had practical proof of its working. Since the introduction of the new Police, the system above advocated has been carried out in the Cantonments of Delhi, Umballa, Jullunder, Sealkote, and Meean Meer, and I am not aware of a single instance where authority was found to clash, or a difficulty to arise in working it.

The writer of that letter was himself a military man. It would obviously be for the interest and advantage of the Police to carry the Commanding Officer with them, and they would be bound to pay him every respect and attention, but according to the principle of Act V. 1861, they should not be under his control and direction.

The Hon'ble Mr. Harington said the construction which Sir Charles Trevelyan had placed on the telegram received from the Government of Madras did not seem to be altogether correct. The question upon which the Government of Madras had directly expressed their opinion was as to whether the administration of the Police in Military Cantonments should be vested in the Cantonment Magistrate or in the District Superintendent of Police under (in either case) the general direction and control of the Commanding Officer of the Cantonments. For the reason mentioned in their telegram the Government of Madras gave the preference to the District Superintendent of Police. The telegram said the Madras Government were strongly in favor of the alternative Section (that was the Section as it now stood) being substituted for the Section in the Bill as published. The Madras Government made no objection to that part of the Section which gave the Commanding Officer of a Military Cantonment a general direction and control over the administration of the Police in the Cantonment, and it might therefore fairly be assumed that they approved of the entire Section as it stood.

The Motion was put and negatived.

The Hon'ble Mr. Roberts then moved that Clause 7 of Section XIX and Section XXV and the concluding words "or Section XXV" of Section XXVII be omitted. He said he had deemed it his duty to object to the introduction of the Clause and Section mentioned, which provided specially for the inspection and control of houses of ill-fame, and for the prevention of the spread of venereal disease, not only in Military Cantonments, but whenever it might be deemed necessary for the protection of the health of the Troops beyond those limits. The prevalence of this disease among our soldiers was truly deplorable. It had assumed such a magnitude as to compromise both the morale and the physique of the Army. Most assuredly the time had arrived when it behoved them no longer to shut their eyes to the evil, but to grapple with it; at the same time he respectfully submitted that the mode proposed was not the right way of dealing with it. The medical surveillance of public women in Cantonments and the compulsory treatment of such as were found to be diseased had been in practice in India with varied success for the last 70 years. It had from time to time been abandoned, either on account of the very partial success obtained, or from the moral objections which existed to the measure. It had again been resumed; was in operation in various places; and now for the first time a British Legislature was asked to sanction the measure. It could, under any circumstances, be carried out only partially in this country; but whether wholly or partially enforced, it was so questionable whether the

end would justify the means, and also whether immunity from this disease might not be purchased by a general loosening of moral principle and an increase of profligacy, that he did not think the measure should be allowed. It must be admitted that the similar measures which had been adopted by various nations on the Continent of Europe had been eminently successful. He believed it to be a fact that not only the French, and Belgian, and Prussian Armies, but the French, and Belgian, and Prussian nations also,—for the repressive measures were not confined to garrison towns and camps, but were general throughout those countries,—were almost exempt from these terrible diseases. Still he thought it a question whether those nations had gained much by this exemption, and whether it was not accompanied with great immorality. These measures had been long in operation, and must have had effect upon the physical, social, and moral condition of the people. He had not succeeded in obtaining any full statistics, still there were some in reach which he would read to the Council. In a comparative table of the percentage of deaths to population in twenty of the kingdoms of Europe (Annals of British Legislation for October 1862 and September 1863), Scotland, in which, of course, no such measures were in force, stood first, and had the lowest death rate; Denmark was 2nd; Norway 3rd; England 4th; France, which has the protective system under consideration, 7th. Belgium, also protective, was 10th, and Prussia 15th. Then the marriage rate and the birth rate were higher in England than in France, and as bearing more particularly upon morals, it appeared that while the proportion of illegitimate to legitimate births was 4 per cent. in London, it was 32 per cent. in Paris. Such facts did not evince a physical, or social, or moral condition which should encourage them to adopt the measures which prevailed on the Continent. Moreover, he had to remark that although the disease which it was wished to check prevailed as much among the Troops at home, and more among the household Brigade in London than anywhere else, it had never been proposed to deal with the evil in this manner in England, and the proposition, if made, would not be tolerated for a moment. He would now consider the measure itself, and whether it was possible to carry it out generally in this country. In order to enforce the measure, it was necessary to ascertain who the public women were with whom the soldiers associated. This was easy enough in Cantonments, for numbers of these women were allowed to live, unfortunately, in almost every Cantonment, sometimes in the regimental bazaars, when they were considered to belong to particular regiments, and sometimes in the sudder bazaar. But how would it be possible to enforce the measure where there were garrisons as at Calcutta, Madras, and Bombay, or where there were Cantonments in proximity to large cities like Benares, Agra, Delhi, Lahore, Peshawur, Poona, &c.? Either the

whole of the public women in these places must be subjected to surveillance and inspection, and that was almost impossible, or through the Police and by other means, which would increase the objections to the measure, it would be necessary to find out who the women were with whom the soldiers consorted and to register them. In any case there would be a recognition of them and of their profession which had not heretofore been sanctioned. The women would consider themselves and would call themselves licensed by, and the servants of, the Government, and the soldiers would think so too. It was useless to say that the latter knew better, and had been taught better. As a body they were ignorant, uneducated, and unreflecting. If they reasoned at all, they would say, "Why is not temptation put out of our way?" "If Government and our officers wish to discountenance immorality, why are these persons allowed to reside in Cantonments so as to offer continual temptation?" It was sad to think that the hundreds of young soldiers and officers who annually came out to this country should, on joining their regiments, find that such persons were allowed to live in Cantonments or close to Cantonments. In the enforcement of the proposed measure, the Civil and Military Officers who would have to find out and register the women would be placed in a very false and often trying position. As to the duty that would devolve upon the Medical Officers, it would not only be false and trying, but humiliating, and possibly demoralizing. If it were possible to check venereal disease by any means which were not open to all these grave objections; if it were possible to do so without lowering moral principle and without the risk, nay almost the certainty, of an increase of profligacy, he (Mr. Roberts) would offer no opposition. But after a mature and anxious consideration of the subject, he concurred with Sir Bartle Frere. He did not believe in the efficiency of Lock Hospitals as established and worked in this country, or in any exceptional measures. He also agreed with Sir William Mansfield that we must in this matter of venereal disease, as in all other reforms which are desirable, depend on morals and education. Both of those high authorities advocated permission to a larger proportion of our soldiers to marry. Indeed, Sir William Mansfield said there should be no limit. Marriage was the remedy which God himself had provided, and no considerations of expense or inconvenience should deter the Government from allowing a larger number of soldiers to marry. And it would not be sufficient to remove the present restriction. It would be necessary to afford greater facilities and even help to the men to get wives. The accommodation for the married soldiers must be improved and better provision made for his family. Measures should also be adopted for the education and improvement and amusement of the soldiers. He was aware that all these subjects had received and were still receiving the attention of Government, but much time had passed, and very little had been done in these respects. Finally, he

would urge the Council to expunge from this Bill the provisions to which he had objected, ere it was brought on the Statute Book of the country.

The Hon'ble Mr. Ellis said "with all respect for the feelings which have influenced my hon'ble friend Mr. Roberts in moving that Clause 7 of Section XIX should be omitted from the Bill, I cannot agree to the force of the reasons which he has given for his objection. There seems to me a wide difference between recognizing the existence of an evil and approving or encouraging the evil itself. I am persuaded that with the experience of the past before them, it will be quite possible for the Government to frame rules for the prevention of the spread of venereal disease which will be found unobjectionable in themselves, and which will not be liable to be misunderstood and misinterpreted. One thing is very certain, that the present policy of practically ignoring this evil—ignoring it by taking no measures for its prevention or reduction—has been any thing but successful. Vice accompanied by most lamentable results has been on the increase, and morality has certainly not been a gainer. On the other hand, we know that where well-considered measures of repression have been taken, not only have the diseases been so reduced as almost to have disappeared, but the numbers of those who minister to vice have been much diminished, temptation removed, and the moral tone of the soldiers improved. Of the magnitude of the evil which it is sought to remedy, there can be no doubt, and the facts connected with this subject have been clearly set forth in an able paper by the President of the Sanitary Commission, which has been recently circulated among the Members of this Council. These facts must, I think, create a feeling of most painful surprize among those who have not previously directed their attention to this subject. From Mr. Strachey's paper it appears that one-third of the British Army passes through the hospitals in one year on account of these diseases only, and it has also been ascertained that a very large proportion of the invaliding which occurs every year owes its origin to these diseases, which also indirectly aggravate the mortality from other diseases. In the same paper Mr. Strachey has brought together facts and figures which must, I think, convince all who are not strongly prejudiced, that great as is this evil, it is capable of prevention and reduction. It has been most clearly shown that, with carefully conceived measures of prevention, these diseases can be extraordinarily reduced; for in one instance quoted, in a *corp d' armée* consisting of 35,000 Belgian soldiers subject to a proper discipline in these matters, there were only 11 men laid up with these diseases. The success of preventive measures is not limited to isolated cases, such as that just mentioned, but is invariably the same in the great continental camps and armies of France and Prussia. The same results have been obtained in the British Army, and the experiments made at Malta and Cephalonia are most decisive. In India, although there has never been the same continuous application of preventive measures—although a system of prevention has not hitherto been recognized by

law, and has therefore been deficient in much important auxiliary aid, and although the measures themselves have not always been judicious—enough has been ascertained, as in the Military Stations of Secunderabad, Wellington, and Trichinopoly, and at Meean Meer, Muttra, and Hazareebagh, to establish the well-ascertained fact that, wherever prevention is systematically enforced by Police and sanitary measures, disease decreases, and that whenever these measures are relaxed, it increases in a most formidable manner. There are many difficulties, varying with the various localities, in devising these preventive measures; but there is a great preponderance of medical and military authority, that such measures are urgently required, and that they can be made thoroughly effectual. No expense is spared in devising means to improve the health and condition of our Army, and wisely much is anticipated from affording the soldiers when off duty, means of industrial employment, education, and manly amusement. An increase in the marriages of soldiers is also being attempted and will no doubt lead to a great improvement in their morals. These measures are of the utmost importance, but they do not, and will not, except remotely and slowly, affect the object aimed at by the rule to which objection is raised. We have to combat an evil of appalling magnitude, ever present and daily diminishing the efficiency of our Army. We have well-tried weapons with which to meet and overpower this evil, and I think the Government which longer neglects to make use of these will incur a grave responsibility. It has been objected that the Legislature of England has kept silence on this subject, and that we should not anticipate in this country legislative action at home. The evil at home resulting from these diseases has now become so well known and is so serious that I think we shall only be anticipating for a short time similar measures in England. But however this may be, I think we should be unwise to delay passing a measure in itself good and useful because we have not an English precedent. We have, in India, anticipated many of the improvements essential to the health, comfort, and morality of the British soldiers, and I shall, I confess, rejoice at our taking also the lead in the important improvement contained in this Bill. I trust I may be allowed to quote once more from Mr. Strachey's valuable paper, an opinion which has in this matter a peculiar value and significance. It is that of the late Mr. Thomason, Lieutenant-Governor of the North-West, who was as remarkable for his moral virtues as he was distinguished for his thorough acquaintance with this country and for his great administrative ability. In his opinion, it was not only the duty of the Government to deal with this great evil both inside and outside our cantonments, but that probably in no other country could measures of repression be carried out more easily, and more effectually, and with less danger of abuse. I think this opinion should have great weight, and should go far to re-assure those who think this portion of the Bill before the Council open to moral objection, or who doubt that it is practically possible to reduce the amount of these diseases among our soldiers."

The Hon'ble SIR C. TREVELYAN was not surprised at the scruples of the Hon'ble Mr. Roberts. The question was one of the most difficult of those which occupied the debateable ground between divine and human law; but having been accustomed to the discussion of the subject for many years in public and in private, and having co-operated with General Sir Patrick Grant in the measures taken in the Cantonments at Secunderabad, Trichinopoly, and Wellington, in the sense of the section in question, he (Sir C. Trevelyan) had no misgiving. There appeared to be no fixed rule or principle in the matter, but the question had to be determined, like any other, on a consideration of the balance of practical good or evil to the public. In England all that public opinion would bear was, that a voluntary asylum should be afforded to unhappy women who had lapsed from virtue, under the shelter of which they might recover their place in society. In India such was the low state of morals, that prostitution was an hereditary profession, the members of which by no means felt degraded, but had their own *esprit de corps* and point of honor. This was implied by the name by which they were known. *Kush* was a profession, and *Kushee* was a professional person. But the decisive consideration was that 70,000 of the youth of England were employed in this country, and whether as soldiers subject to discipline; as young men at the age most liable to temptation; or as a large body of the most uninstructed portion of our fellow-countrymen in this distant land, their claim for protection and active assistance was overwhelming. The absolute necessity for taking some steps in their behalf would be seen from the following two paragraphs of the letter from the President of the Sanitary Commission :—

"We may thus consider that at least one-third of the whole European army passes through the hospitals in the course of the year on account of these diseases alone. At many stations the proportion is much higher, amounting to fifty, sixty, and sometimes even to seventy per cent. of the force. It may be assumed on any day in the year that a number of men equal to the ordinary effective strength of a regiment are disabled from this cause. The average length of time during which each man remains in hospital under treatment is at least three weeks. The reports of the Royal Commissioners for enquiring into the sanitary state of the army in India, states that the annual cost of each soldier in India is £100. Assuming this to be correct, the direct money loss caused to the State at the present time by these diseases, is not less than £75,000 a year. The indirect loss cannot be estimated, but it must be extremely large. The figures that have been given above by no means represent the full amount of disease attributable to these causes. All the highest authorities agree in declaring that venereal diseases are the origin of a very large proportion of the invaliding which occurs every year, and that the mortality from

other diseases is most seriously aggravated by them. Dr. Duncan Macpherson, Inspector General of Hospitals in Madras, who has made this subject a matter of special study, has placed his belief upon record in the following words:—'As to the type of the malady, so destructive has it become that few who 'imbibe it can hold on to the Service beyond five or six years from the date 'of inoculation. * * * The prevailing diseases are everywhere syphilitic, 'and fully two-thirds of those who imbibe the disease are invalided within 'five years, and are sent out of the Service with a loathsome poison circulating 'in their veins, which passes down to their posterity.'* In another Report Dr. Macpherson states that he had become 'assured, after close 'inquiry, that the great majority of the European invalids of Her Majesty's 'Service in the Madras Presidency have their constitutions more or less 'impaired by syphilis.' There can be no question that the highest medical authorities hold the same opinion in Bengal."

* Minutes of Evidence taken before the Commissioners appointed to enquire into the sanitary state of the Army in India, Vol. I, Page 34.

Other parts of the same report showed by the example, not only of the Continent of Europe, but of various military cantonments in India, how much might be done to stay this plague, which reproduced itself in the next generation in the shape of scrofula, cancer, and malformations of various kinds. The matter would not be dealt with as heretofore in a desultory manner, measures having been taken up or abandoned according to the varying views of different Commanding Officers; but it would be treated according to a comprehensive well-considered plan, under the superintendence of a Commission, which had already established a just claim to the public confidence; and if the Commission went on as it had begun, great public benefits must result from its exertions. No doubt, there were only two effectual remedies for the vice which occasioned this disease, *i e.*, religion and marriage, and nothing that could be done to encourage religious principle in the soldiers, and to induce them to marry should be omitted. But after all that was possible had been done in this direction, much would be left undone. Where were wives to be found for successive relays of 70,000 men? Marriage was a blessed institution, but its very essence depended upon its being voluntary, and most young Englishmen preferred to retain their liberty, during the early active period of life, until they were able to support a family. Something might be done by providing occupation for the men in the Gymnasium and the reading-room; but the main thing of all was to give them an object in life. All men were not religious, but all were more or less influenced by the desire to prosper in this life. Many improvements had of late years been made in this respect as regarded the higher classes of Civil and Military Servants, and what was wanted for the Soldier was to bring to bear upon him, in a regulated and certain man-

ner, the same prevailing motive of bettering his condition This would teach him the value of character, would induce habits of self-respect, and, if anything could, would keep him from discreditable vices.

The motion was put and negatived.

The Hon'ble MR. MAINE then moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

The Hon'ble MR. ANDERSON presented the Report of the Select Committee on the Bill to provide for the solemnization of marriages in India of persons professing the Christian Religion.

ADMINISTRATION OF JHANSIE AND OTHER DISTRICTS (N. W. P.) BILL.

The Hon'ble MR. HARINGTON in moving for leave to introduce a Bill relating to the administration of certain Districts under the Government of the Lieutenant-Governor of the North-Western Provinces said, in the early part of the year 1862, the late Lieutenant-Governor of the North-Western Provinces issued of his own authority a set of Rules for the administration of Civil justice in the Districts of Jhansie, Jaloun, and Lullutpore, which formed part of the Territories under his Government, and for the superintendence in those Districts of the settlement and realization of the Public Revenue and of matters relating to Rent. The Rules so issued, in so far as they related to the administration of Civil justice, were afterwards extended, by an order of the Lieutenant-Governor, to the Provinces of Kumaon and Gurhwal. The Lieutenant-Governor would seem to have supposed that because the Districts and Provinces named were what was called Non-Regulation, that was, were not subject to the general Regulations, he was vested, in their administration, not only with the powers of the Executive Government, but also with the power of making Laws, anything in the Indian Councils Act, 1861, notwithstanding. This was obviously a mistake, and the unauthorized issue of the Rules in question having been brought to notice, it was highly desirable that immediate measures should be taken to correct the mistake, both in order that the Civil administration of the Districts and Provinces to which the Rules issued by the Lieutenant-Governor applied, might be placed on a legal footing, and also to prevent the validity of the decisions and orders passed, or proceedings held under the Rules from being called in question solely by reason of the Rules not having

been made in the manner provided in the Indian Councils Act. These two objects would be accomplished by the Bill which he had asked for leave to introduce. He had looked at the Rules issued by the Lieutenant-Governor, and though the Rules relating to the administration of Civil justice would not, in his opinion, bear comparison with the Code of Civil Procedure, which was now in force in the greater part of the British Territories in India, and though he could not understand why the Lieutenant-Governor, having power to extend that Code to the Districts and Provinces mentioned in the present Bill, should have preferred to give them a Code prepared by himself, still there was no reason to suppose that, in the cases which had been disposed of under the Lieutenant-Governor's Rules, any substantial injustice had been done, and it would be very unjust to the successful parties in those cases to allow the validity of the decisions and orders passed and of the proceedings held in them to be called in question and to be set aside, simply because in issuing the Rules the Lieutenant-Governor had acted *ultra vires*. The Bill proposed to substitute the Code of Civil Procedure with a slight modification, and the general law of limitation contained in Act XIV of 1859, in the Districts and Provinces to which the Rules issued by the late Lieutenant-Governor extended, for the procedure and limitation prescribed by those Rules, but to give validity to the Rules so far as they related to other matters. The Bill declared that "no decision, order, or proceeding of any Court or Officer under any of the Rules made and extended by the Lieutenant-Governor should be held to be invalid only by reason of such order or decision having been passed, or of such proceeding having been held before the passing of this Act." The introduction of the present Bill seemed to afford a suitable opportunity for removing doubts which had long existed as to the legal position of another tract of country under the Government of the North-Western Provinces, and for placing the administration of this tract on a proper and legal footing. The tract of country alluded to was situated in the Dehra Dhoon, and was called Jounsar Bawur. It was very wild and backward, and, generally, its condition would seem very similar to the tract of country described in the Schedule annexed to Act XIV of 1861. It was now proposed to bring the tract in question under the same system of administration as had been introduced, under the authority of the Act just mentioned, in the Pergunnahs to which that Act applied, and to extend to it the Rules in force in those Pergunnahs. It had been deemed proper, however, to add a proviso that nothing in the Act or in Act XIV of 1861, should be held to exclude the particular tracts of country referred to in the present Bill or in Act XIV of 1861, from the operation of the Indian Penal Code. He had been informed that some doubt existed on this point as regarded the country described in Act XIV of 1861, which it was desirable to remove.

The Motion was put and agreed to.

The Hon'ble MR. HARINGTON having applied to His Excellency the President to suspend the Rules for the conduct of business,

The President declared the Rules suspended.

The Hon'ble MR. HARINGTON then introduced the Bill and moved that it be referred to a Select Committee, with instructions to report in one week.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill relating to the administration of certain Districts under the Government of the Lieutenant-Governor of the North-Western Provinces—The Hon'ble Messrs. Harington, Maine, Roberts, and Anderson.

The Council adjourned.

CALCUTTA,
The 30th March 1864.

C. BOULNOIS,
Offg. Depy. Secy. to Govt. of India,
Home Dept.

Govt. Central Press.—No. 319 L. D.—20-4-64—50.

Abstract of the Proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., C. 67.

The Council met at Government House on Wednesday, the 6th April 1864.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding*.
His Honor the Lieutenant-Governor of Bengal.
Major General the Hon'ble Sir R. Napier, K. C. B.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble A. A. Roberts, C. B.
The Hon'ble H. L. Anderson.
The Hon'ble C. H. Brown.
The Hon'ble J. N. Bullen.
The Hon'ble Rajah Sahib Dyal Bahadoor.

MARRIAGE BILL.

The Hon'ble MR. ANDERSON, in moving that the Report of the Select Committee on the Bill to provide for the solemnization of Marriages in India of persons professing the Christian Religion be taken into consideration said, "I consider it due to the Christian community of this country to submit some observations explanatory of the grounds on which this measure is deemed expedient. The doubts and difficulties which have arisen have had their origin in the extraordinary complexity of the question of what by the Common Law of England does or does not constitute a valid marriage, and the fact that the Statute which insisted on a more decent, though not more simple, system has not been extended to India, and if it had been, would only have added to the confusion which surrounds the subject. The Statute to which I allude is the 26th Geo. II, cap. 33. It was passed in 1753, and took its effect from March 1754. It is commonly called Lord Hardwicke's Act. Its direct object was to provide that all marriages not solemnized in a Church after due solemnization of banns in that Church, or under a license from competent authority, should be null and void. Incidentally, but not I think with direct intention, it rendered necessary the presence of a person in Holy Orders at the ceremony. When I say incidentally, I

merely mean to suggest that I believe the framers of the Act commenced their work under the conviction that such presence of a person in Holy Orders was essential to the validity of a marriage, and that they did not believe it necessary to assert the principle in so many words. The measure has never been extended to India, and when the question arose of whether the presence of a person in Holy Orders was essential to the validity of a marriage, the course of the inquiry would be to ascertain what was the Common Law of England on the subject. But this question is one which has elicited a more laborious, learned, and subtle discussion than on any other occasion was ever submitted to the highest judicial tribunal in England; it called forth the most complete contrariety of opinion, and it really can hardly be said to have been decided. The celebrated decision of Lord Stowell (then Sir William Scott), in *Dalrymple* v. *Dalrymple*, which was mainly directed to the determination of a question of Scotch Law, laid down, not extrajudicially as has been asserted, but as an argument subsidiary to his immediate conclusion, that by the Common Law of England a contract of marriage "*per verba de præsenti*" constituted a valid marriage. When such a jurist as Lord Stowell had pronounced his opinion, it might have been imagined that the point was ruled for ever. But in 1826, there came forth a challenger who strongly impugned the position assumed in Lord Stowell's great decision. Mr. Jacob in an edition of "*Roper on the Law of Husband and Wife*" argued with great learning and consummate ability, that the presence of a person in Holy Orders was by the Common Law of England necessary to the validity of a marriage. It has generally been allowed that it was this opinion of Mr. Jacob which induced in 1842 the objection that the marriage involved in the great case of the *Queen* v. *Millis* was void. I think that in some of the discussions which that case produced at the time and afterwards, there may be traced something like a feeling of irritation that a young Barrister should have re-opened a question, which ought to have been regarded as disposed of for ever by the authority of Lord Stowell. But Mr. Jacob was no common man, and had his life been spared, there might very possibly have been few names more illustrious in the annals of the Law. Dying comparatively young, he is chiefly known as having twice compelled the omniscient Whewell to take the second place in mathematical contests, and as having carried the whole bench of England with him in assailing a position which the genius of Lord Stowell was thought to have rendered impregnable. His opinion, then, leads us to the case of *The Queen* v. *Millis*. This was a case in which George Millis had in 1829 contracted a marriage in Ireland, with Hester Graham, in a Presbyterian Chapel, before a Presbyterian Minister, and had afterwards in 1836 married another person in England. He was prosecuted for bigamy, and the question was raised whether the first marriage

not having been solemnized in the presence of a Clergyman in Holy Orders that is, who had received episcopal ordination, was valid. The case was removed by a writ of *certiorari* to, and was argued before the Court of Queen's Bench in Dublin. The Court was divided. Mr. Justice Perrin and Mr. Justice Crampton thought that as a marriage contracted "*per verba de præsenti,*" it was valid. Mr. Justice Burton, and Chief Justice Pennefather, held that as no person in Holy Orders was present, it was not a valid marriage. I should mention that I have not had an opportunity of reading the case before the Irish Court, but that Mr. Justice Crampton appears to have thought that the fact of a regular ceremony having been performed by a Presbyterian Clergyman rendered the marriage valid. His opinion would appear, then, to have been something like that eventually held by Lord Campbell. The junior Judge, Mr. Justice Perrin, "*pro formâ,*" withdrew his opinion, and the case came before the House of Lords. After an elaborate argument at the Bar, the opinions of the Judges were invited. Lord Chief Justice Tindal then delivered the unanimous opinion of the Bench that the Irish marriage was not valid, not having been solemnized in the presence of a person in Holy Orders. This conclusion, Sir Nicholas Tindal stated, had not been reached without considerable discussion and great fluctuation of opinion; and he particularly impressed upon the Lords that, although the Judges agreed to the conclusion, he was not authorized to bind them down to the arguments and presumption on which that conclusion, as exhibited in his reply, was founded. The Law Lords then delivered their opinions. Lords Brougham, Campbell, and Denman considered the Irish marriage to be valid. Lords Abinger and Cottenham, and Lord Chancellor Lyndhurst, held that it was not valid. In this equality of opinion, the direct question being whether Millis had committed bigamy, the rule *semper presumitur pro negante* was applied, and judgment given for the defendant in error. We thus see that the judgment in *The Queen* v. *Millis* did not conclusively establish the principle that the presence of a person in Holy Orders was necessary to the validity of a marriage. It did not, I should rather say, place the conclusion above legal question; it only disposed of the immediate case before the House by a technical rule. The Court of Exchequer has, however, subsequently considered itself bound by the decision of the Lords, and in *Catherwood* v. *Caslon* pronounced a marriage solemnized by a Presbyterian Minister in the English Consul's House at Beyrout, in Syria, to be void. But on the other hand, a great authority in all questions connected with matrimony, Dr. Lushington, in the case of *Catterall* v. *Catterall*, refused to be bound by the decision in *The Queen* v. *Millis*. That case was an Australian one. The parties had been married under an Act of the Legislature of New South Wales by a Presbyterian Minister. The Act was an exact

copy of the Statute 58 Geo. III, cap. 84, under which marriages are solemnized in India by Presbyterian Clergymen, and provided that a declaration be made that one of the parties was a member of the Established Church of Scotland. In the particular case, the parties did not sign this declaration; but Dr. Lushington held that the Act did not state that if the prescribed forms were neglected, the marriage should be void. I mention this point particularly as it will be of use with reference to another question to which I shall advert hereafter in connection with this Bill. That Dr. Lushington's view was perfectly correct will be seen by any one who will compare the Statute 7 and 8 Will. III, cap. 25 with Lord Hardwicke's Act. The one punished the Priest and the parties, the other went further and provided that the marriage should be null and void. Dr. Lushington then allowed the question to be raised and argued, that the contract was sufficiently a marriage to enable a Court to pronounce sentence of separation by reason of adultery. The Common Law of England had been carried to New South Wales by the Statute 9 Geo. IV, cap. 83. Dr. Lushington refused to be bound by the decision in the *Queen* v. *Millis*, because the Law Lords had been divided in opinion, and it was only in consequence of the form in which the case came before the House, that the judgment took the shape in which it appeared. He gave judgment for a separation. The Council will thus see that since the decision in the *Queen* v. *Millis*, the Court of Exchequer had in a Syrian case held one view, and that at Doctors' Commons, in an Australian case, a precisely opposite view had been taken by Dr. Lushington. I would next draw the attention of the Council to an Indian case, *Maclean* v. *Cristall*, tried before Chief Justice Sir E. Perry, at Bombay. The parties had been married at Surat by a Missionary named Fyire, a gentleman of very high character, but who had not received episcopal ordination. In this case also the question was raised whether the marriage was valid, and the decision in the *Queen* v. *Millis* was relied on. Sir Erskine Perry in his judgment took, evidently against his own conviction, the view of the Law imposed on him, as he considered, by the decision of the House of Lords; but he held that the whole of the Common Law had not been extended to India, but only so much of it as was suitable to the condition of the country. He thus met the objection *ad absurdum*, suggested by Lord Campbell, as to whether the Mutineers of the Bounty living on Pitcairn's island were to be regarded as living in concubinage until visited by a Clergyman who had received episcopal ordination. Sir E. Perry's decision, then, was in favour of the validity of the marriage. It would be presumptuous in me to dilate on the ability displayed in this judgment, especially as I am inclined to take a different view from that which Sir Erskine Perry evidently held on the Common Law question; but I may, as one born and resident in India, be

allowed to advert for a moment to the self-reliance and breadth of view with which he enunciated the principle, that the whole of the Common Law had not been applied to India. Major Maclean subsequently obtained his divorce in the House of Lords, but the point involved in the *Queen* v. *Millis* was not, I believe, raised, and the question is not regarded as having been finally resolved. I cannot, then, but fear, that some other Judge in India may take a narrower view of the applicability of the Common Law than that exhibited in Sir Erskine Perry's judgment; and, on the other hand, it is the duty of this Council to take care that, with respect to so important a relation as marriage, no undue laxity be introduced. It is mentioned in the Statement of Objects and Reasons originally prefixed to the Bill, that in 1854 a person who had received no kind of ordination had pretended to join several couples in matrimony, and the late Mr. Ritchie expressed an opinion that the marriages thus performed were legal. If this view of Mr. Ritchie, a name which can never be mentioned without respect, be correct, it is clear that we have to deal with a very serious evil. I do not myself concur in the view; but the mere fact that such a man as Mr. Ritchie entertained it, must be sufficient to induce the Council to adopt due precautions that such irregular marriages be declared by enactment to be void in future.

(The Hon'ble Mr. Anderson then submitted at length to the Council his opinion as to whether, by the English Common Law, the presence of a person in Holy Orders was necessary to the validity of a marriage. After referring to various authorities, he stated that he considered such presence of a Clergyman to be essential, and that it was principally because he did think so that he urged on the Council the adoption of the measure now proposed. He then proceeded.)

I would now submit, Sir, to Your Excellency and the Council, that we have two difficulties to encounter, *first*, that it may at some time very possibly be held that a marriage "*per verba de præsenti*" is not valid by the English Common Law, and that some Judge, with less breadth of view than Sir E. Perry, may declare that part of the Common Law applicable to India; *secondly*, if the opposite view be correct, then a large portion of the Native Christian community, and perhaps some portion of the European Christian community, may be reduced to a social condition little better than concubinage; no better, with respect to the enforcement of certain civil rights, through the instrumentality of impudent impostors pretending to have authority to solemnize marriages. The late Mr. Ritchie proposed to deal with these evils by restricting legal marriages in India—1*st*, to those solemnized by persons who had received episcopal ordination; 2*nd*, to those solemnized by Clergymen of the Church of Scotland, one of the parties being a member of that

Church; 3*rd*, to those performed by or in the presence of a Marriage Registrar under the Statute 14 and 15 Vic., cap. 40, and Act V of 1852 of the Governor-General of India in Council. All other marriages, he proposed, should be declared to be null and void. The Bill, as prepared by Mr. Ritchie, may be regarded only as a first draft; it had not received the final corrections of his accomplished intellect, and public discussion had in no way been invited upon it. On the Bill coming into the hands of the Hon'ble Mr. Harington, a new Chapter was added providing a simpler and less expensive form of marriage for Native Converts. This part of the Bill will, I think, be regarded as not the least of the many services rendered by that gentleman to this Council and this country. The rest of the Bill Mr. Harington wisely left untouched until public opinion had been expressed upon it. That opinion has now been widely expressed with great intelligence and great moderation. The Select Committee, on a full consideration of the whole subject, has earnestly endeavoured to adapt this Bill to the wants of the country. It has placed the clergy of the Church of Scotland on an equality with the Church of England, recognizing the argument that India should be regarded as neutral ground between the two Churches. With this view, it proposes that the declaration and certificate that one of the parties is a member of the Scotch Church, required by the Statute 58 Geo. III, cap. 84, shall be no longer required. I am the more induced to recommend this change by the consideration that in Dr. Lushington's opinion, the absence of such declaration and certificate will not nullify the marriage. But the Select Committee has done more than this; it has proposed to enable Ministers of the Free Church of Scotland and of Dissenting Congregations to solemnize marriages under licenses from the different Governments. It may possibly be said "Let such as object to Episcopal or Presbyterian ordination be married by Marriage Registrars." But I fully believe that many Dissenters, good men and good citizens, entertain a fond desire for a purely religious ceremony, a ceremony in which the lay element shall be intruded as little as may be convenient, and in which it certainly shall not constitute the legalizing leaven. But I go further than this, and say that if there were no other alternative, many good members of the Church of England would prefer to be married by some future Alexander Duff in Calcutta, or some future John Wilson in Bombay; by some Philip Doddridge, Robert Hall, or John Foster, of Dissent, than by any Marriage Registrar in the world. This is a sentiment which, taking care that all things be done decently and in order, we should not disregard. It is a tribute of respect which may wisely and gracefully be paid to the blameless lives, the unselfish ambition, and the pure example of the Missionaries in India. With respect to Native Converts, I would, as briefly as I can, submit two remarks. It is very probable that the various Governments will at first be inclined to issue licenses to persons to grant certificates of marriage

between Native Converts, only in the Mofussil. My Hon'ble friend, Mr. Ellis, with characteristic acuteness, remarked in the Select Committee that Native Converts in the Presidency Towns would thus be thrown back on Part II of the Bill, which makes the age of twenty-one years the earliest age at which marriage may be solemnized without the consent of parents and guardians, or without extended notice. The Hon'ble Mr. Ellis was inclined to think that at Madras, if not in Calcutta, Bombay, and other large Towns, these circumstances would operate as a serious impediment. It was pointed out by my Hon'ble friend, Mr. Maine, that the Governments were not debarred from granting licenses under Part V to persons in Presidency Towns, and that if, on experience, such a measure seemed necessary, the Local Governments should be moved on the subject. My Hon'ble friend, Mr. Ellis, expressed himself satisfied with this explanation, but he particularly begged me at the time and afterwards, as he should be absent from this debate, to mention his doubt to the Council, which I have accordingly done. The other point to which I would allude is one which has been pressed upon the attention of the Select Committee from all sides. It relates to the condition that neither of the Native Converts intending to be married shall have a wife or husband still living. The communications placed before the Select Committee point urgently to a Native Christian Divorce Act—that is, that a Native Convert shall be competent to obtain a divorce, when his unconverted wife, after interrogation before civil authority, obstinately refuses to live with him. On this it should be remarked, that Europeans in this country have not as yet obtained a proper Divorce Act, and secondly and principally, that in a matter into which so many various and important considerations enter, regarding which there is so much contrariety of opinion, and in which native feeling may be deeply involved, the Government on which the great responsibility rests should in no way be compromised, and that no invidious duty of opposition should be precipitately imposed upon it. The question of divorce is allied to the one under discussion; but it is still perfectly distinct from it, and it is one which every consideration of prudence and policy would leave to the unbiassed deliberation of the Government. With respect to Roman Catholics it may be objected, that Priests are debarred by this Bill from marrying persons "*in articulo mortis*," and that in some instances the last sacraments of religion cannot be administered unless such marriage be first solemnized. To this I would reply, earnestly trusting I shall give no offence to the feelings of any fellow Christian, that if a Priest solemnizes in good faith a marriage between parties, one of whom is on his death-bed, for the sole purpose of administering the sacraments, he will run little or no risk from the provisions of this Bill. His conduct will probably never come beneath the cognizance of the Magistrate,

and if it does, the punishment will probably be merely nominal But one of the objects of this Bill is to prevent such marriages from carrying any civil rights with them A wise Legislature should oppose itself to all such marriages, whether Protestant or Roman Catholic, so far as the rights of others are concerned They may be performed for the good of a man's soul, but must not be allowed to affect the transmission of his estate I do not know that I have any further remarks to submit, but I must not omit the public expression of my great obligation to the Lord Bishop of Calcutta for some excellent suggestions with which he has favored me, and which have been adopted by the Select Committee The Bill is, I honestly believe, a liberal Bill, and a safe Bill, it is, therefore, I trust, a wise Bill It will inspire security where doubt before existed, while introducing freedom, it will secure decency It will, I hope, be acceptable to the entire Christian community, and I now respectfully commend it to the consideration of your Excellency and of the Council

The Hon'ble Mr Maine said, that his hon'ble friend had given the history of this difficult question with much learning, clearness, and ability, and, so far as his (Mr Maine's) recollection served him, with much accuracy On the whole, he agreed in the opinion of his hon'ble friend that, under the English Common Law, the presence of a person in Holy Orders was essential to the validity of a marriage Mr Anderson had fully analyzed the course of decision on the point, and he (Mr Maine) would only add one *á priori* consideration Among the influences which had the greatest effect on the Common Law, but which the course of English history had tended most to keep out of sight, had been the influence of the Canon Law, and it would always require strong evidence to convince him that any doctrine of the Canon Law on any fundamental point had not been transferred to the Common Law The case of the *Queen* v *Millis* had, no doubt, never been considered altogether satisfactory, but that was chiefly owing to the peculiar position of the defendant and the special circumstances of the decision Had the case, however, been decided the other way, it must have immediately been followed by legislation very much like that embodied in the present Bill, in other words, the laxer doctrine must have been negatived and a liberal system of solemnizing marriage established The state of the Scottish law was only possible where population was comparatively thin and where a strict ecclesiastical discipline existed, and, much as ecclesiastical discipline had been broken into of late years in Scotland, it was still in practice about the strictest in the world In England, a similar condition of the law would have been intolerable He approved of the shape in which his hon'ble friend had presented the Bill

The Motion was put and agreed to

The Hon'ble Mr. Grey moved that in Section VII, instead of the words "provided also that no Clergyman of the Church of England shall solemnize a marriage in a private dwelling or in any place except a Church Chapel, or other building generally used for public worship," the following words be substituted :—

"Provided also that at any place or Station where there is a Church, or Chapel or other building usually set apart for public worship on Sundays, no Clergyman of the Church of England shall solemnize a marriage in a private dwelling or in any place except in such Church or Chapel or other building usually set apart for public worship."

He (Mr. Grey) said that he entirely sympathised in the feeling which he supposed to have led to this provision of the Bill, in reference to the permission to solemnize marriages in private dwellings; but in this opinion the Clause as it stood was not well adapted to the state of things in many parts of the country. Europeans living 20 or 30 miles, or further, from a Station which contained the nearest place of worship, would be unable to secure the presence of a Clergyman to solemnize their marriage, unless they obtained a special license on payment of such fee as the Bishop of the Diocese might fix. If his amendment were not accepted, he should move that an additional proviso be added to the Section, to the effect that the fee should not exceed the sum of fifty Rupees.

The Hon'ble Mr. Harington said he thought the words "or other building generally used for public worship" would meet the case of parts of the country, such as had been referred to by Mr. Grey, better than the words proposed to be substituted for them, and he would suggest that the words which he had quoted be retained. There were still many places in which, owing to there being no Church or Chapel, public worship was held in a private dwelling, or in a public Office, either the Court House or the Magistrate's Cutcherry; but these buildings, though they might be held to fall within the meaning of the Section as now worded, could not be said to be set apart for public worship.

The Hon'ble the Lieutenant-Governor expressed a strong objection to the Clause as it stood, on the ground that it might reduce persons to the alternative of undertaking a long journey, or paying an indefinite amount by way of a fee. This would operate with special harshness upon persons in indifferent circumstances.

The Hon'ble Mr. Anderson said that the amendment proposed by the Hon'ble Mr. Grey had regard to the convenience of only a small class of persons. The general principle was a very important one, and in his opinion

the amendment proposed was calculated unduly to relax a rule which it was desirable to maintain as strictly as possible.

The Hon'ble Mr. Grey said that there was very little that had been said by the Hon'ble mover of the Bill in which he did not agree, but upon this point he felt that his amendment would not materially affect the principle for which the Hon'ble Member contended, while it would tend to prevent inconvenience and hardship. It had been said by the Hon'ble Mr. Anderson that this Section had been introduced at the wish of the Bishop of the Diocese, who entertained a very well grounded opinion as to the expediency of discouraging the celebration of marriages in private dwellings. But in his (Mr. Grey's) opinion the prohibition in the Section as it now stood was too general. He had no objection to adopt the suggestion of the Hon'ble Mr. Harington as to the substitution of the words "generally used" for "usually set apart."

The motion to insert the words of the amendment proposed by the Hon'ble Mr. Grey, altered as suggested by the Hon'ble Mr. Harington, was put and agreed to.

The Hon'ble the Lieutenant-Governor moved that the words "or affinity" be omitted in Clause 2 of Section XLII. He said that he was unaware to what extent the question might have received the consideration of the Select Committee, but in his opinion there was no reason why the disability involved in the retention of these words should be imposed upon Native Converts. The prohibited degrees of affinity were, he supposed, those which were found in the Prayer Book. These were adopted at the time of the Reformation by Archbishop Parker and were afterwards made part of the Ecclesiastical Law. Under that Law marriages within the prohibited degrees of affinity were not in themselves invalid, but were voidable only upon proceedings in the Ecclesiastical Court. It was not until 1835 that Parliament, after enacting that all such marriages previously contracted were valid, and taking away from the Ecclesiastical Courts the power of dissolving them, declared that all future marriages of the kind were illegal and absolutely void. It was questionable whether the Legislature should recognize the application of these Rules to Native Converts, especially the prohibition of marriage with the sister of a deceased wife, which had recently been the subject of much discussion, and to abolish which, a Bill had twice, if not oftener, passed the House of Commons. Whether rightly or wrongly, the feeling of the Natives was, he believed, not opposed to such marriages. There was nothing in Nature or Religion against them, but they were objected to in England on social grounds which did not apply here. In many States of Europe and of North America, such marriages were legal. In legislating specially for Native Converts, it was

in his opinion unjust to prohibit marriages of this description, as by far the greater number of such persons—whatever might be the custom of particular castes—would before their conversion have been liable to no such restriction. The effect of this Bill would not, he admitted, be to change the substantive law. Whatever might be the present Law of marriage applicable to Native Converts, it would not be affected by the Bill; but when the Legislature declared that marriages performed according to certain conditions should be vaild, and prescribed as one of those conditions that the parties should not be related to each other within the prohibited degrees of affinity, it was difficult to avoid the inference that marriages otherwise performed, if not illegal, were, at any rate, discouraged by the Legislature, and of less certain validity; and this he thought unjust to the particular class of Christians to which he had referred.

The Hon'ble Mr. Harington said the objection taken by the Lieutenant-Governor to the Clause of the Bill to which His Honor's remarks applied, appeared to be based upon an erroneous assumption. The Lieutenant-Governor said, he saw no reason why the disability involved in the words which he had moved should be omitted from the Clause, should be imposed upon native Converts. But the Clause made no new law. The concluding part of the Statement of Objects and Reasons, which was published with the Bill, in calling attention to the Clause said—

One of the conditions contained in Section XLII of part IV of the Bill as essential to the granting of a Certificate of marriage under that part is that the parties shall not stand to each other within the prohibited degrees of affinity or consanguinity.

It is to be observed that this is no new provision as respects Native Christians, though probably it is not always attended to. There seems to be no doubt that the legal impediments of kindred or affinity in respect of marriage, which apply to European Christians, apply equally to Native Christians, and so long as such impediments apply to European Christians, it is considered to be impossible, with any degree of propriety, to exempt Native Christians from them, or to make any distinction in this respect between the two classes.

He had made this statement not upon his own authority, but upon the authority of the present Hon'ble and learned Chief Justice of the High Court of Judicature at Calcutta. Sir Barnes Peacock had expressed himself very decidedly upon the point. He declared that the law made no distinction between Native and European Christians. They could not have higher authority. The view taken by Sir Barnes Peacock accorded, he believed, with the opinions of other high legal authorities both in this country and at home. The Marriage Register Act contained the same condition as the Clause objected to by the Lieutenant-Governor. This Act applied alike to Native and to European Christians. The Clause formed part of the Bill as published upwards of a year ago, and though it had been objected to in some quarters, he believed the opinion was very generally entertained

that so long as the legal prohibition against marriage with a deceased wife's sister (for that was the only point at issue) continued in force in the case of European Christians, it would not be right to change the law as respected Native Christians. When the Bill was before the Select Committee, it was considered whether the Clause should stand as part of the Bill, and the conclusion arrived at by the Committee was that it certainly ought to do so. The Committee, looking at the object of the Bill, which was simply to facilitate the solemnization of marriages in India of persons professing the Christian Religion, whether Europeans or others, were of opinion that the Bill ought not to alter the existing law on any important point of principle. He entirely agreed in this view. Whatever opinions Hon'ble Members might entertain upon the question as to whether marriage with a deceased wife's sister should or should not be allowed, he (Mr. Harington) submitted that they could not alter the Clause, and declare that the impediment which existed in the case of European Christians should no longer apply to Native Christians without previous notice, but if notice of such amendment were given, they would not be able to pass the Bill to-day. It would be necessary to defer the passing of the Bill to allow time for considering the amendment, and this he thought would be a very great misfortune. If, after the passing of the Bill, any Hon'ble Member should consider that the existing law should be altered in so far as it affected Native Christians, it would be open to him to introduce a Bill to make such change in the law, but he contended that they would not be justified in altering the law without previous notice as was now proposed to be done. He might add that he had been told by persons well informed on the subject that amongst large portions of the Hindoo community, marriage with a deceased wife's sister was regarded as very objectionable, and that they were as strongly opposed to the connection as any European Christians could be. From a conversation which he had lately had with the Lord Bishop of Calcutta, he had been led to understand that this was the feeling entertained by many of the Native Converts on the Western Coast, which his Lordship had visited in his recent tour, and he gathered that the Missionaries in that part of the country were quite willing that the Bill should pass with the Clause as it now stood.

His Excellency the President said that the customs of the Natives of India as to marriage were various. Among the Jâts it was an injunction that when a man died, his brother, if a brother survived him, should marry his widow.

The Hon'ble the Lieutenant-Governor said that it was dangerous to rely on what might be alleged to be the feeling of the Natives of India on such a point. His own enquiries had led him to a precisely opposite conclusion. In fact it was impossible, without a formal investigation, to arrive at a satisfactory result.

There were, however, two passages in the papers circulated amongst the Members of the Council to which he would refer them. One was in a petition presented by the Protestant Ministers and Missionaries of Calcutta, and the other in a communication from a Missionary employed by the Propagation Society.

Your Petitioners would point out the important consequences involved in running counter to the universal practice of Native Society in India, in summarily introducing into Indian legislation without further definition, "the prohibited degrees of affinity;" and express their strong objection to the proposed clause in its present form.

On the other hand, marriage with a deceased wife's sister, which the Law of England does not recognize, is very common among the Hindoos.

As to the argument that the Bill did not alter the substantive law, he had carefully limited his statements to this, that the Bill only virtually imposed a disability on Native Converts. It might be true that Native Converts were legally subject to this disability at present under the indiscriminate operation of a general law; but, practically, the prohibition was disregarded as being contrary to feeling and custom, and now that we proposed to legislate specially for Native Converts, it was not fair expressly to impose it.

The Hon'ble Mr. Maine said that, if he could give effect to his own opinion, he would legalize, generally, marriage with a deceased wife's sister; but he thought there were strong objections to legalizing it between Native Christians before it had been legalized among Englishmen. Native Christians had discouragements enough to contend against already, and their principal advantage consisted in their being placed on a footing of absolute equality with the dominant race in everything relating to religion. To place them under a different law of marriage was to destroy that equality and to mark them with what would practically amount to a badge of inferiority. Moreover, he (Mr. Maine) was disinclined to having so large a question opened on such short notice. The Lieutenant-Governor and many other persons argued as if nothing was involved in these prohibitions except the question of marriage with a deceased wife's sister. But there might be some who, while they considered the prohibitions on the score of affinity too stringent, considered the prohibitions on the ground of consanguinity too lax. If the whole subject were to become *res integra*, and they were to revert to natural laws, was it quite certain that marriages between first cousins ought to be permitted? He was unwilling to open such perplexing questions on a Bill like this, and would rather have the law of marriage the same as applied to all Christians in India.

The Hon'ble MR. ANDERSON was of opinion that the words should be retained. They in no way extended the law at present in force. As to the principle, before effecting any changes in this country, it would perhaps be better for the Council to wait till they saw the course of the Legislature in England.

The Hon'ble MR. ROBERTS said that he was authorized by the Rajah Sahib Dyal Bahadoor to state that as regarded Hindoos, Mahomedans, and Parsees, there was no custom to prohibit marriages with the sister of a deceased wife.

The Hon'ble SIR R. NAPIER said that the restriction referred to in the Bill was not necessarily connected with the profession of the Christian religion, and he could not see that to omit the words would place Native Christians on a lower or different scale than others.

The Hon'ble the Lieutenant-Governor said there was a clear distinction of principle between the prohibitory rules founded upon the consanguinity of the parties and those relating to affinity. Marriages within certain degrees of consanguinity involved a violation of the law of nature; marriages within any degree of affinity were opposed only to feeling and custom. So far from his experience having led him to the same conclusion as his Hon'ble friend Mr. Harington, he believed that amongst the Natives of Bengal there was nothing to prevent a person marrying any one of his wife's relations.

The Hon'ble MR. ANDERSON said that this Bill had been before the Council for more than two years. This important question had been strongly urged upon the notice of the Select Committee, and at this late stage of the Bill, it appeared to him that this amendment ought not to be made.

The Hon'ble MR. CLAUD BROWN said that the omission of the words of the Section which the Hon'ble the Lieutenant-Governor had proposed to strike out would, as it had been stated on the highest legal authority, have no effect to alter the existing law. He should therefore support the amendment.

The Hon'ble the Lieutenant-Governor said that rather than that the Bill should pass with the words he proposed to leave out, he would move to strike out part V of the Bill, though on the whole he highly approved of it. He wished to press the amendment.

The Hon'ble RAJAH SAHIB DYAL said that, although there was not, to his knowledge, any custom among the Natives of India to prohibit the contracting of the marriages in question, yet, in his opinion, Converts to Christianity ought to follow the rules prescribed for persons of that religion. He should oppose the amendment.

The Motion having been put, the Council divided—

AYES.	NOES.
His Excellency the President.	The Hon'ble H. B. Harington.
The Hon'ble the Lieutenant-Governor of Bengal.	" " H. S. Maine.
	" " A. A. Roberts.
The Hon'ble Sir R. Napier.	" " H. L. Anderson.
" " W. Grey.	" " J. N. Bullen.
" " Claud Brown.	" " Rajah Sahib Dyal.

So the Motion was negatived.

The Hon'ble MR. ANDERSON then moved the following amendments, of which notice had been given.

That Section XXI be omitted, and the following words be substituted to stand as Section XXIV :—

"Every marriage solemnized in India, from and after the 1st day of July 1864, by any person who has received episcopal ordination or by any Clergyman of the Church of Scotland or by any Minister licensed under this Act to solemnize marriages shall be solemnized between the hours of six in the morning and seven in the evening. But the provisions of this Section shall not apply to a Clergyman solemnizing a marriage under a special license permitting him to do so at any hour other than between six in the morning and seven in the evening from and under the hand and seal of the Bishop of the Diocese, or from his Commissary. For such special license the Registrar of the Diocese shall be entitled to charge such additional fee as the Bishop of the Diocese may sanction.

Section XXVIII.—That the first nine lines and the first word of line 10 be omitted, and that the following words be substituted :—

"Every marriage solemnized by a Clergyman of the Church of Scotland shall be registered by the Clergyman solemnizing the same in a register of marriages to be kept by him for the Station or District in which the marriage shall be solemnized, in the form prescribed in Section XXVI for marriages solemnized by Clergymen of the Church of England, and such Clergyman

shall forward quarterly to the Secretary to Government, through the Senior Chaplain of such Church, returns similar to those prescribed in the preceding Section for Clergymen of the Church of England, of all marriages solemnized by him."

The Motions were severally put and agreed to.

The Hon'ble the Lieutenant-Governor of Bengal moved that the words "and from whom he or she has not been divorced" be added at the end of Clause 3 of Section XLII.

The Hon'ble MR. ANDERSON said that he felt the strongest objection to the introduction of these words. No law of divorce existing, the words would have no meaning, except so far as they might be construed to commit the Government or the Council to an opinion that there would be a law of divorce at some future time.

The Hon'ble MR. MAINE opposed the amendment.

The Lieutenant-Governor of Bengal said that if the amendment proposed was considered open to the construction that it tended to commit the Supreme Government to a future course of action in this manner, he would withdraw it. It was sufficient for him to have drawn the attention of the Council to the pressing necessity for a law of divorce, especially one applicable to Native Converts.

The Motion was accordingly withdrawn.

The Hon'ble MR. ANDERSON moved that the words "in the presence of Almighty God" be inserted in line 31 of Section XLII.

The Motion was put and agreed to.

The Hon'ble MR. ANDERSON having applied to His Excellency the President to suspend the Rules for the conduct of business,

The President declared the Rules suspended.

The Hon'ble MR. ANDERSON then moved that the Bill be passed with the amendments recommended by the Select Committee and those now adopted.

The Motion was put and agreed to.

ADMINISTRATION OF JHANSIE AND OTHER DISTRICTS (N. W. P.) BILL.

The Hon'ble MR. HARINGTON presented the Report of the Select Committee on the Bill relating to the administration of certain Districts under the Government of the Lieutenant-Governor of the North-Western Provinces, and having applied to His Excellency the President to suspend the Rules for the conduct of business, to admit of the Bill being at once passed through its remaining stages,

The President declared the Rules suspended.

The Hon'ble MR. HARINGTON then moved that the Report be taken into consideration. He said the only change of any importance which the Select Committee had made in the Bill was the addition of a Section by which the Lieutenant-Governor of the North-Western Provinces was empowered to extend the Code of Civil Procedure to the tract of country known as Jounsar Bawur, as well as to the tracts of country described in Act XIV of 1861. The Code of Civil Procedure contained a Section authorizing the Local Governments to extend the Code to Non-Regulation Districts, which was the character of the tracts of country referred to, but as, since the passing of the Code, Rules relating to the administration of Civil Justice had been authoritatively laid down by the Lieutenant-Governor as regarded the tracts of country described in Act XIV of 1861, it was doubtful whether, with reference to an opinion given by the Advocate General, the power of the Lieutenant-Governor to extend the Code to these tracts had not ceased. All doubt on the point would be removed by the Section which the Select Committee had added to the Bill.

The Motion was put and agreed to.

The Hon'ble MR. HARINGTON moved that the Bill as amended by the Select Committee be passed.

The Motion was put and agreed to.

The Council adjourned.

CALCUTTA,
The 6th April 1864.

C. BOULNOIS,
Offg. Depy. Secy. to Govt. of India,
Home Dept.

Government Central Press.—No 520 L. D—23-4-76—50

Abstract of the Proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Thursday, the 7th April 1864.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Honor the Lieutenant-Governor of Bengal.
Major General the Hon'ble Sir R. Napier, K. C. B.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble Sir C. E. Trevelyan, K. C. B.
The Hon'ble W. Grey.
The Hon'ble A. A. Roberts, C. B.
The Hon'ble H. L. Anderson.
The Hon'ble C. H. Brown.
The Hon'ble J. N. Bullen.
The Hon'ble Rájá Sáhib Dyál Bahádur.

CUSTOMS DUTIES.

THE HON'BLE SIR C. TREVELYAN, in moving for leave to introduce a Bill to amend the law relating to the Customs Duties on goods imported by sea said—

I remarked in my last Financial Statement that, after a long series of Indian deficits, the year 1862-63 opened a new era. The account of that year has now been completed, and the surplus of Income over Expenditure amounts to £1,827,345, which sum was added to the Cash Balances.

Compared with the Budget Estimate of the year, the improvement is £1,647,531, or, according to the Secretary of State's corrected Statement, £1,183,631. The increase in the single item of Opium was £1,755,476. Mr. Laing's Estimate was £6,300,000. The actual receipts were £8,055,476.

The increase in the Revenue of India during the last five years, corrected according to the actual accounts, is as follows :—

1858-59	...	...	...	£36,060,788
1859-60	...	...	...	£39,705,822
1860-61	...	...	...	£42,903,234
1861-62	...	...	...	£43,829,472
1862-63	...	...	...	£45,143,752

The most important event of the current year, 1863-64, in its bearing upon the finances, has been the depressed state of the money market. The first symptoms of this appeared at Bombay in October, and, throughout the last six months of the year, the revenue has suffered from its injurious influence. Upon the Opium revenue the effect has been particularly marked. The average price of the Calcutta sales during 1862-63 was Rs. 1,429 a chest. The average price during the first six months of 1863-64 was Rs. 1,371. The average price of the five sales which have since taken place is Rs. 1,100. At Bombay, owing to the scarcity and dearness of money, which afterwards extended to China, and caused a serious fall in the prices there, the taking out of Opium Passes at the fixed rate of Rs. 600 a chest was almost suspended. Last year, in order to get the benefit of the high prices, every available chest was sent down to Bombay. This year a large number of chests are held back, awaiting a better state of the money market, and the greater part of the receipts from the Pass duty will be thrown forward to 1864-65. The Budget Estimate for Bengal will be rather more than realized; but there is an estimated deficiency of £1,150,000 on the entire produce of this branch of revenue in the two Presidencies of Bengal and Bombay.

Two other sources of revenue show a small decrease owing to exceptional causes. "Customs" are £15,400 less than the Budget Estimate, and £140,166 less than the actual receipts of 1862-63. The import trade, from which the greater part of the Customs Revenue is derived, has continued in a depressed state, owing to the high price of Manchester goods and the abnormal condition of the money market. The other item is "Salt," in which there is a decrease, compared with the Budget, of £124,100; but an increase, compared with the actual receipts of 1862-63, of £34,150. Owing to the unusually large quantity of duty-paid salt which came into the market in Bengal in 1862-63, the decrease there is £200,000, but there is an increase of £27,500 in the Punjab and of £61,000 at Madras.

The other sources of revenue show satisfactory improvement.

In 'Land Revenue' the increase is general throughout India, amounting to £572,100 compared with the Budget Estimate, and £710,853 compared with the actual receipts of 1862-63.

In "Forest," which is now separated from "Sayer," there is an increase of £41,900.

In "Abkaree" there is an increase of £134,700 compared with the Budget Estimate, and £42,920 compared with the actual receipts of 1862-63. This increase would have been larger but for a falling off in the North-Western Provinces owing to the introduction of the Sudder Distillery System in May last. The

object of this system is to raise a maximum revenue from a minimum consumption. The loss of revenue is not to be regretted so far as it is caused by the cessation of the inducements to the intemporate use of spirits held out by the former contract system ; but it is not desirable that there should be a virtual prohibition of the ordinary wine of the country, which can only benefit the Smuggler. The experiment is in safe hands, and the whole of India will gain by its being satisfactorily worked out.

The "Income Tax" shows an increase of £88,800 compared with the Budget Estimate, of which £51,700 occurs in Bombay. Compared with the actuals of 1862-63, when the tax was one per cent. higher upon incomes above Rs. 500, and the tax of two per cent. on incomes below Rs. 500 had still to be collected for three months, there is a decrease of £187,212.

"Stamps" show an increase of £208,600 compared with the Budget Estimate, and of £242,562 compared with the actual receipts 1862-63.

The other items are under heads the receipts of which accrue under no fixed rules, but vary with the circumstances of the time. They show an increase of £5,700 compared with the Budget Estimate, and of £640,797 compared with the actuals of 1862-63. The falling off of £125,400 in "Military Receipts," compared with the Budget Estimate, is chiefly caused by the cessation of the nominal receipts from cash payments between Departments ; and the diminution of £250,700 under Public Works arises, partly from the withdrawal, from this head of receipt, of funds which, although received by Public Works Officers, were expended for, and had been finally appropriated to local objects ; and partly from Public Works Receipts having been over-estimated.

The whole of the revenue of the year, including Opium, is less than the Budget Estimate by £217,700, and than the Actual Receipts of 1862-63 by £390,252. Excluding Opium, there is an increase of £932,300 compared with the former, and of £815,224 compared with the latter. The temporary falling off in a branch of revenue which is peculiarly dependent upon the state of the money and produce markets, has, therefore, been almost compensated by the continued improvement of those branches which are the true index of the condition of the pepole. The increase of £710,853 in the Land Revenue, compared with last year, furnishes decisive proof of the prosperous state of the agricultural community. It must arise from extended and improved cultivation, for there has been no enhancement of rates. The increase of £242,562 in the produce of the Stamp Revenue, in like mannèr, shows the activity which has prevailed among the Commercial classes and the increasing extent of their transactions.

Before noticing the expenditure, it is necessary to mention that the practice of dividing the charge for the same service among several Departments has been discontinued, and the grants are now shown, according to the English method, under the Departments which undertake the respective services. Therefore, although the aggregate sum of the Estimate published with the Financial Statement of the 30th of April last, is the same as that of the Budget Estimate now given, the details vary under most of the heads of expenditure from those which appeared in that Estimate.

The increase under "Allowances, Refunds, and Drawbacks," £47,700, is nominal, the entire amount being on both sides, and the payments being claimable of right. Compared with the Actuals of 1862-63, there is a decrease of £26,766.

The increase under "Salt," £56,475, arises in Bengal and Bombay. In the former Presidency reductions in Establishments were not effected so early as was anticipated, and in the latter, the purchase of Salt, which had previously been shown under a suspense head in the "Debt" Account, is now shown as a charge against Revenue. Compared with the Actuals of 1862-63, there is a decrease of £164,511.

The increase under "Opium", £108,700 is caused by larger advances made to cultivators at the increased rates, and by the sums expended in buildings. Compared with 1862-63, there is an increase of £253,122.

The increase of £36,504 under "Mint" arises from the more full employment of the Mints at Calcutta, Madras, and Bombay.

The increase under "Army," £150,309, is caused by the expenditure, estimated at £200,000, arising out of the Sitana Expedition, and the movements of Troops connected with that Expedition and with the Camp of Exercise which was at one time contemplated. Compared with 1862-63, there is an increase in the Military expenditure of £956.

The increase under Marine charges, £244,344, is caused by the Marine Establishments at Bombay not having been reduced to the extent intended. Compared with 1862-63, the decrease is only £193,390.

The sum appropriated for "Public Works" by the Budget of 1863-64, irrespective of the construction of Railways, was £4,995,100, after which additional grants were made, which brought the total amount up to £5,408,575; but, according to the best information that can be obtained, at least £250,000 of this will not be expended previously to the termination of the Financial year, because the available supply of labour is limited in many parts of India, and professional establishments cannot be suddenly expanded to meet additional demands upon

them. The sum at which the expenditure for "Public Works" has been taken in the Regular Estimate is, therefore, £5,158,575. This is £163,475 more than the Budget Estimate, and £757, 943 more than was expended in 1862-63.

The Budget Estimate for "Education, Science, and Art" was £461,600, which was increased by additional grants to £552,300. Owing, however, to the late period at which most of these additional grants were made, and to the time occupied in the administrative arrangements to give effect to them, it is improbable that the sum expended within the Financial year will exceed £502,300. This is an increase over the Budget Estimate of £40,700, and of £101,939 over the expenditure of 1862-63.

The decrease under "Interest," £98,208, is caused, partly by the reduction effected in the Public Debt by the purchase of Government Securities, and partly by the exclusion of Unclaimed Interest after a careful calculation of the average charge. Compared with 1862-63, there is a decrease of £106,680.

Under "*Net* expenditure in England" there is a decrease of £312,118, which arises from an increase of £132,662 in the Home Receipts, and a diminution of £179,447 in the Home Charges.

"Guaranteed Interest on Railway Capital, less Net Traffic Receipts," is also less than the Budget Estimate by £71,492, the Net Traffic Receipts having been larger than was expected by £88,667.

According to the Regular Estimate, the net increase in the expenditure compared with the Budget Estimate is £231,546.

The Budget Estimate assumed a surplus of Income over Expenditure of £480,775. According to the Regular Estimate, the surplus will be only £31,529, being a difference against the Budget Estimate of £449,246. My own expectation, however, is that, when the accounts of the year are finally made up, the customary result of increased receipts and diminished expenditure will appear, and the surplus will be found to be as large as was originally estimated by me. Compared with the actual accounts of 1862-63, the Regular Estimate for 1863-64 is worse by £1,795,816. This is mainly due to the difference, amounting to £1,205,476, between the receipts from Opium in the former and in the latter year.

In my last Financial statement, I announced, on behalf of the Government, that any funds that could be expended with advantage on Roads, on Works of Irrigation and Navigation, or on any other useful works, would be granted, during this financial year, in addition to the large appropriation for Public Works, amounting to nearly £5,000,000, made by the Budget, and to £4,000,000 more, estimated to be required for the construction of Guaranteed Railways. I also said that if, in the course of this year, any well-considered plans for promoting Education were brought forward which could not be provided for from the grant of the year, a further appropriation would be made. These pledges have been

redeemed. No objection has been made to any proposal for Public Works or Education on the score of want of Funds. The additional grants for Public Works have amounted to £413,475, and for Education to £90,700. They will not all be spent within the year, as has been already stated ; but the Government did all that was in its power.

I also showed how much a healthy state of the Finances would be promoted if, instead of paying for Public Works out of the Cash Balances, the whole expenditure of the year, including the great Public Works grants, were provided for out of Ways and Means raised within the year, and the surplus of the Cash Balances were employed in extinguishing Debt. This policy has been acted upon. Including the Public Securities purchased from the Currency Deposits, which are held to meet a possible, but extremely improbable, demand for the payment of an equivalent amount of Government notes, the net annual charge for Interest here and at home has, within the last two years, been reduced by half a million. The operations alluded to are as follows :—

At Home.	£
East India Bonds paid off	256,200
Loans on Security of East India Bonds repaid ...	1,500,000
Debentures paid off	5,557,000
In India.	
Government Securities purchased out of the Balances at Calcutta	1,000,000
Ditto ditto out of the proceeds of the sale of Waste Lands and confiscated Estates	100,000
Ditto ditto out of the Currency Deposits under Act XIX of 1861...	3,000,000
Tanjore Debt and Treasury Notes and Bills paid off ...	431,303
Loan repaid to the Rájáh of Cashmere	60,000
Cancelled Government Securities of the Rebel Narain Sing after deducting £75,000 to make a provision for his brother by adoption	200,500
Total	12,105,003

On the other hand, Non-transferable Notes have been granted for £669,067 for the investment of sums belonging to the Pension Funds of different branches of the public service; but, as the Government has bound itself to receive the available balances of these Funds, whether the money is wanted or not, and to allow rates of interest higher than the usual rate, they should be distinguished from the ordinary debt. These transactions have in them more of the nature of grants than of loans.

It must be remembered that, as mentioned in my last Financial Statement, we borrowed, towards the close of the Mutiny, five millions sterling more than we wanted.

According to the Budget Estimate, the Cash Balance on the 30th April 1864 would have been £15,427,400. According to the Regular Estimate it will be £14,533,834, or £893,566 less. This is the balance which remains in hand in India, after providing for the payment of the Drafts of the Secretary of State to the extent of £9,000,000, and for payments to the several Railway Companies and the Irrigation and Canal Company, amounting to £3,873,567. The sale of the Secretary of State's Bills upon the Indian Treasuries has given great relief to trade, by obviating the necessity for the remittance of an equal amount of Bullion from England ; and further aid has been afforded by gathering up our Indian balances, and sending to Bombay every available Rupee to be exchanged for a portion of the Bullion which the Mint was unable to coin with the requisite speed. The working power of the Mint has been lately much increased by additional machinery.

At Home, there are only two Treasuries—the Bank of England and the Bank of Ireland—and an annual expenditure of upwards of £70,000,000 is worked by a Cash Balance which seldom amounts to more than £6,000,000 ; and even this is exhausted by the payments of the dividends after the close of the quarter. In India, there are 211 separate Treasuries, which have to be kept in funds to provide for the payment of the Troops and other current demands ; and, with a total annual expenditure of only £44,000,000, including the payment of the Secretary of State's Drafts, the average Cash Balances in India have been in 1860-61 £14,144,240 ; in 1861 62 £16,451,621 ; in 1862-63 £18,322,423 ; in ten months of 1863-64 £15,376,033 ; and in the whole forty-six months £16,103,907. This is in addition to the Cash Balance at the credit of the Secretary of State in London. Therefore, although the difficulties are great, there is still much room for improvement in India in this important branch of Finance ; and arrangements have been made, by a careful classification of the Treasuries, and a strict limitation of the amount to be retained in each, for keeping the Balances in the Provincial Treasuries as low as possible, and for promptly remitting all surplus funds to the General Treasuries at Calcutta, Madras, and Bombay, in order to their being utilised for the public service. These large accumulations of silver, under the name of Cash Balances, are one of the causes of the scarcity of that metal. Their amount for each month since May 1860 will be seen from the Table in the Appendix, page i.

I now proceed to the expenditure for 1864-65.

In 'Allowances, Refunds, and Drawbacks' there is an increase, compared with the last Budget Estimate, of £20,040, but as this item is incapable of strict regulation, it calls for no remark.

In 'Land Revenue, Forest and Abkaree,' there is an increase of expenditure amounting to £245,368 compared with the Budget Estimate, and to £270,450 compared with the Regular Estimate of 1863-64. The progress of improvement has given value to the Forests, and exertions are making to save them from further dilapidation by a well-considered system of conservation. This is one reason for the increased expenditure ; another is the employment of additional Establishments in every Province to revise the existing Land Revenue Settlements, with a view to give to India, at the earliest practicable period, the advantage of a permanent limitation of the Land Tax, or, where the cultivation is in too backward a state to allow of this, of a thirty year's lease. The outlay upon this and upon the conservation of the Forests, is of the nature of a reproductive investment. The financial results, direct and indirect, of the new Permanent Settlement, will be of the most important kind. One effect will be that the charge for the settlement and collection of the Land Revenue, which has become a very serious item, will be much diminished.

There is a reduction of £5,377 in 'Assessed Taxes,' and of £76,017 in Customs' compared with the expenditure provided for in the Budget Estimate of 1863-64.

In 'Salt,' there is an increase of £50,372 compared with the Budget Estimate of 1863-64, which chiefly arises from the provision made at Madras for an increased quantity of salt for consumption in 1864-65 ; but there is a reduction of £170,614, compared with the actual expenditure of 1862-63, caused by the cessation of the Government manufacture in Bengal.

In 'Opium' there is an increased expenditure of £253,461 compared with the Budget Estimate, and of £144,761 compared with the Regular Estimate for 1863-64. This also is of the nature of an investment to be reproduced in increased receipts. The increase in the rates of payment to cultivators has produced that extension of the cultivation which was pronounced by Mr. Wilson and Mr. Laing to be indispensable for the preservation of the Opium Revenue.

The expenditure on 'Stamps' is substantially the same as in the Budget and Regular Estimates for 1863-64.

The expenditure on the three Mints of Calcutta, Madras, and Bombay shows an increase of £89,869 compared with the Budget Estimate, and of £53,365 compared with the Regular Estimate of 1863-64. This arises from the necessary preparations for an increased coinage of Silver and Copper money during the ensuing year, the expected fruit of which is seen in the estimated increased receipts from this source, amounting to £78,500 compared with the Budget Estimate of 1863-64.

Both 'Post Office' and 'Electric Telegraph' show a small decrease of expenditure, which, in the case of the Post Office, chiefly arises from the development of the Railway system.

There is a reduction of £50,458 on 'Allowances and Assignments under Treaties and Engagements,' and an increase of £40,481 on 'Allowances to District and Village Officers' compared with the Budget Estimate of 1863-64. These payments are made under positive engagements or fixed rules.

On 'Miscellaneous,' and 'Contingencies, special and temporary,' taken together, there is a decrease of £10,569 compared with the Budget Estimate of 1863-64.

The actual expenditure on the Army in 1862-63 was £12,764,325. The Budget Estimate for 1863-64 was £12,614,972. The Budget Estimate for 1864-65 is £12,653,189.

Under this aggregate, important increases and decreases are included.

The new scales of Staff Salaries and Regimental Pay cause an additional annual charge of £90,000.

Increased pay to Native Officers and improved rates of Good Conduct Pay to Privates of the Native Army, £90,400.

The transfer of the two remaining Military Police Corps from the Police to the Military Establishment, £27,400.

Two years' arrears of compensation for Extra Clothing recently granted to the European Troops, £60,000.

Additional compensation for dearness of provisions to the Native Troops in the Madras and Bombay Presidencies, £45,000.

Increased expenditure in the Bengal Ordnance and in the Madras and Bombay Commissariat, caused, partly by the necessity of bringing up reduced stocks, and partly by the present enhanced prices, £110,000.

On the other hand, £50,000 has been saved by reduced stock, and diminished price of beer; and £60,000 by the decrease and better regulation of the Pension List. After deducting the cost of gratuities and extra pensions to the Madras Native Artillery to four Regiments of Madras Native Infantry, and to the East Indian Regiment, which are to be disbanded, there will be a reduced

expenditure of £35,000 in 1864-65, and a prospective reduction of upwards of £60,000. A transfer has been made to the Civil Departments of the charge for the pay of Officers employed by them, amounting to £63,700.

It will be seen from what I have said that, while, on the one hand, reductions of permanent charge have been made; on the other, a considerable additional outlay has been authorized for improvements which will promote the fidelity and efficiency of the Native, and the comfort of the European Army. But for the heavy additional charge arising from this, and from the increase of prices, especially in the Madras and Bombay Presidencies, there would have been a reduction in the Military expenditure. Order has been re-established in the administration of the Army after the great convulsion through which it passed, and all that relates to the accounting for, and auditing of the expenditure, is worked up closer than before. At the same time, the tendency to increased expenditure, arising from enhanced prices and the demand for improvements of various kinds, continues, and will be productive of embarassing results if it is not met by corresponding measures of economy. The entire estimated cost of the Indian Army for the year, including the payments to be made at Home, is £14,856,201.

The incidental receipts of each Department are credited in the Balance Sheet on the opposite side from the expenditure. It will be seen that the sum expected to be received in connection with the Army in 1864-65 is £661,300; so that the net charge for the Army in India is £11,991,889.

'Marine Charges' are £231,924 more than the Budget Estimate for 1863-64, which was taken on the supposition that the Marine expenditure would be much diminished by the abolition of the Indian Navy. Subsidies to Steam-boat Companies, amounting to 46,200 per annum, which had previously been divided among several Departments, will, for the future, be entirely charged to this head. 'Marine Charges' are still in course of reduction as the arrangements for the Royal Navy performing the same duties in the Eastern Seas as in other parts of the world are carried into effect.

The grant for Works of Public Improvement for the current year was £2,380,000 with a Reserve Fund of 10 per cent, or £238,000, for any works which it might afterwards be determined to commence, and which could not be provided for out of the proportion of the £2,380,000 allotted to the several Local Governments and Administrations. The additional sum actually granted exceeded the Reserve Fund, but the expenditure will fall a good deal short of the grants.

It has been determined to appropriate a consolidated sum for Works of Public Improvement next year, equal to the grant of this year, with the addition of the Reserve Fund, or £2,618,000 in all; and to allot it among the different Governments and Administrations in about the same proportions as the original grant of this year. The sum for Civil Buildings and ordinary Military Works will be the same as last year, i. e., £570,000 for the former and £650,000 for the latter.

The proportion of the three preceding grants assigned to the Bombay Presidency is £620,000. This is reported by the Governor in Council to be insufficient. The development of that part of India and the harbour and fortification works in progress, undoubtedly require a large expenditure; but the works carried on at the same time ought to be kept within such limits as will not violently disturb the labour market. 'The price of all materials and labour has so greatly increased, that 60 lakhs of Rupees will not now do more than that which 30 or 40 lakhs would have effected three years ago.' From this it may be inferred what would be the consequence of a largely increased expenditure. All things considered, the Governor-General in Council has determined to increase the assignment for Public Works at Bombay by a special grant of £200,000. This will be irrespective of £204,330 estimated to be required in 1864-65 for Public Buildings at Bombay, balanced by a sum of £250,000 expected to be realized by the sale of lands on the Esplanade.

The sum appropriated this year for building new Barracks for the European Troops and for other special Military works is the same as last year, or £300,000. This will be divided among the Local Governments, including Bombay, according to their respective requirements.

The sum taken in the Budget Estimate for 1863-64 for Railway supervision and cost of land was £182,500. This year it will amount to £309,500.

The loss by Railway exchange in 1863-64 was estimated at £294,600. In 1864-65 it will be £256,900.

The one per cent. appropriated from the Income Tax in aid of Local Works was at first roughly estimated at £380,000 a year. The continuance of this rate of advance would exceed the proportion applicable by law to the object; and, as the Act will expire soon after the termination of 1864-65, the appropriation for that year has been limited to £250,000, subject to a settlement of account after the Tax shall have been fully realized.

While, therefore, the aggregate grant for 1863-64 was £4,995,100, the grant for 1864-65 is £5,358,730, besides about £35,000 appropriated in the Educational

Estimate for grants-in-aid of building schools, and £4,185,420 which will be advanced for the works of Railway and Irrigation Companies, or £9,579,150 in all. All this is in addition to a further large sum which will be expended upon Works of Public Improvement from Local Funds. The details of the grant will be seen in one view in the Statement in the Appendix, page ii.

Under 'Salaries and expenses of Public Departments,' the Budget and Regular Estimates of 1863-64, and the Budget Estimate for 1864-65, are much the same. This arises from the care which is taken to reduce unnecessary Offices, while others, suited to the wants of the time, are established.

Under 'Law and Justice' there is an increase of £106,225 compared with the Budget, and of £175,611 compared with the Regular Estimate of 1863-64. This is caused by the appointment of additional Judges, and by the grant of increased salaries to the inferior Judges with a view to secure a more complete administration of justice.

Under 'Police' there is a reduction of £62,754 compared with the Budget, and of £51,760 compared with the Regular Estimate of 1863-64. The beneficial effect of the revision of the Police expenditure, which has been for some time in progress, and of collecting under this head the charges for Treasury, Jail, and personal guards, which used to be scattered through the different Departmental Estimates, is very apparent. The Bombay Government has ordered the disbandment of the Guzerat Horse, the cost of which, amounting to £165,606 per annum, was included in the Police Estimate of that Presidency.

The grant for 'Education, Science, and Art' has been increased in reference to each of the Local Governments and Administrations, the aggregate grant for 1863-64 having been £461,600, and that for 1864-65 being £561,175. This is in addition to large appropriations from Local Funds, and to School Fees, which last have been placed on an equal footing with local subscriptions as a basis for grants-in-aid. There is no subject to which the administrative freedom of the Local Governments is more applicable than that of Education. Instead of the Supreme Government jealously insisting on adherence to a particular code, the Local Governments are left to adapt the regulations to their respective wants. It is evident, from the general movement in this direction, that the time has arrived for extending education, from the upper and middle classes, to the body of the people ; and the impression is gaining ground that the last English improvement of the grant-in-aid system—the plan of paying by results—is even more applica-

ble to India than to England. It furnishes a simple, elastic, intelligible rule, which is capable of easy adaptation to every circumstance, whether the difference be between the scholars in normal, and those in ordinary schools; between boys or girls; or between children in advanced or backward parts of the country. Care should be taken that the funds applicable to education are not bestowed upon institutions which are already self-supporting.

There is an increase, compared with the Budget Estimate of 1863-64, of £13,409 for 'Political Agencies and other foreign services,' and a larger one, amounting to £71,597, under 'Superannuation and Retired Allowances, and gratuities for charitable and other purposes.' This last arises from the transfer of the Marine pensions to this head.

'Miscellaneous' and 'Civil Contingencies,' taken together, are less than the Budget Estimate of 1863-64 by £7,937.

Under 'Interest' there is a reduction of £137,951 compared with the Actuals of 1862-63, and of £129,479 compared with the Budget Estimate of 1863-64. This is caused by the repayment of the sum lent by the Rajah of Cashmere during the mutiny; the cancelment of the Government Securities belonging to the Rebel Madhu Rao; and the purchase of Government Securities from the proceeds of the sale of Waste Lands and of lands belonging to Rebels. The average sum annually disbursed for the payment of interest has also been more accurately ascertained.

The net expenditure in England, amounting to £4,929,924, is £13,504 less than the actual expenditure of 1862-63; £417,376 less than the Budget Estimate of 1863-64; and £105,258 less than the Regular Estimate of 1863-64. This favourable result is chiefly due to an extensive payment of debt.

'Guaranteed Interest' on Railway Capital, less. Net Trafic Receipts, is £1,622,916 in 1864-65 against £1,617,825 in 1863-64, or £5,091 more. While the guaranteed interest payable in England has increased from £2,445,825 to £2,700,000, a set-off has been obtained by the increase in the Net Traffic Receipts in India from £828,000 to £1,077,084.

The total estimated expenditure for 1864-65 is £45,340,582, which shows the following increase :—

Compared with the actual expenditure of 1862-63...	£2,024,175
„ with the Budget Estimate of 1863-64...	„ 850,157
„ with the Regular Estimate of 1863-64...	„ 618,611

I will now make such remarks as appear to be called for upon the Estimate of the Revenue for 1864-65.

I observed that in 'Land Revenue' the increase in the current year has been general throughout India, amounting to £572,100 compared with the Budget Estimate, and £710,853 compared with the actual receipts of 1862-63. I estimate the Land Revenue for 1864-65 at £20,265,000. This is £16,000 less than is expected to be realized according to the Regular Estimate in the current year. Considering the steady increase of the Land Revenue for several years, and the stimulus which the prevailing high prices give to the extension of cultivation, this is a very moderate Estimate. The Land Revenue is justifying its old reputation as the staple of our financial system. Only one-third of the culturable area of India is cultivated; and, as it is evident that the prices of agricultural produce cannot recede to their former level, the increase of cultivation, and, with it, if proper steps are taken, the accretion of the Government share of the rental, must go on for an indefinite time to come.

'Abkaree,' in like manner, has shown a steady annual increase inspite of the falling off in some parts of India arising from the introduction of the Sudder Distillery System. The increase of the Budget over the Regular Estimate is £93,680. Effectual steps have been taken to remedy the defects of the Sudder Distillery System which led to a falling off in certain districts.

Under 'Assessed Taxes' the Estimate for 1864-65 is £207,340 less than the Regular Estimate for the current year, which is chiefly owing to one-quarter of the full rate of four per cent having been realized in the current year, whereas 1864-65 will be entirely at three per cent.

'Customs' are estimated at £13,140 less than the sum expected to be realized in the current year according to the Regular Estimate. There is a falling off to the extent of £61,000 by the abolition of the Transit duties under the Treaty with Burmah; and, although a revival of the general trade may be expected in the course of next year, it is safer to take the Estimate on the supposition that trade will continue in the depressed state in which it has been for the last two years.

The revenue from 'Salt' is estimated at £5,442,510, against a Budget Estimate this year of £5,402,400, and a Regular Estimate of £5,278,300. This Revenue shows a general growth in all parts of India, and the local causes which led to its falling off in Bengal in the current year are passing away.

Last year the Pass duty was realized upon 51,228 chests of Malwa and Guzerat Opium, which was nearly the entire crop of the year. This year, at least

20,000 chests will be held over the expiration of the year, and must be added to 25,000 chests, which is the lowest Estimate that can be made of the Malwa Crop; and to 5,000 chests expected from Guzerat, making 50,000 chests in all. The produce of the Pass duty upon this number of chests is £3,000,000. As only 21,730 chests of Malwa and Guzerat Opium were sent forward to Bombay in eleven months of this year, against 48,454 chests in the same period of last year, or 26,724 chests less, the stocks in China must be low.

The number of chests to be brought to sale in Bengal in 1864-65 is 50,516. The lowest average rate per chest which was obtained at the period of the greatest scarcity of money in December last was Rs. 963. The average price at the five sales which have taken place since the depression in the money market commenced is Rs. 1,100 It is extremely improbable that, under any state of things that is likely to arise during the ensuing year, the average price will fall below Rs. 1,000 a chest, and I have, therefore, taken it at that amount. On 50,516 chests, this gives £5,051,600.

The remaining £200,000 is the sum which will be credited to the Opium Revenue for 3,000 chests of Opium to be supplied to the Abkaree and Medical Departments during the ensuing year, and for the miscellaneus receipts of the Opium Department.

In a branch of Revenue which depends so much upon the state of the produce and money markets, there must, of course, be great uncertainty, and I have, therefore, framed my estimate at the lowest rates admissible according to the facts before us.

'Stamps' have been taken at £12,070 more than is expected to be realized in the current year according to the Regular Estimate, which, considering the general activity in business throughout the country, and the consequently growing nature of this branch of Revenue, is less than may be expected to be realized.

Mint, Post Office, and Electric Telegraph show a moderate but satisfactory increase. A large profit will be derived from an extensive coinage of Copper money. The convenience of the body of the people is more concerned in an abundant supply of Copper money for carrying on their countless small transactions, than in a gold or paper currency.

The increase in the Public Works Receipts arises from £250,000 expected to be received from the sale of building allotments on the Esplanade at Bombay, against an estimated expenditure of £204,330 for new Public Buildings at that place.

The increase of £88,400 over the Budget Estimate of 1863-64 under receipts from 'Interest' is caused by additional investments of Currency Deposits, and the dividends upon additional shares held by the Government in the Banks of Madras and Bombay.

The total estimated Revenue is £46,163,870, which exceeds the actual Receipts of 1862-63 by £1,020,118, and the Regular Estimate of 1863-64 by £1,410,370.

As the estimated expenditure for 1864-65 is £45,340,582, there is an estimated surplus for that year amounting to £823,288.

So far as it is possible to form a judgment of the future, I consider this an assured surplus.

The ordinary sources of Revenue have steadily increased for several years, and have not been materially checked even by the late extraordinary embarrassments of the money market; and if this growth continues for another year, the Receipts will be carried much beyond the figures at which I have taken them. The Receipts from Opium are at the lowest rate at which it was possible to estimate them. On a view of all the probabilites, the Estimate of the Government of Bengal, which was at the rate of Rs. 1,122 a chest, will be nearest the truth, but I have taken it only at Rs. 1,000 a chest.

On the other hand, the Estimates of expenditure are at a maximum, and in some important respects beyond a maximum. If the appropriation for Public Works, amounting to £4,995,100, which included a large sum for Local Funds, could not be spent in 1863-64, it is still less likely that £5,358,730, irrespective of Local Funds, can be spent in 1864-65. At any rate, the ample provision which has been made for the ensuing year will prevent any extra demands. The Estimate for the rest of the expenditure has been taken on the basis of the full sanctioned scale for all fixed charges payable within the year, with an ample margin for contingencies.

At this point it becomes necessary to review our position.

The Income Tax will expire on the 31st July 1865. Its annual produce, at the present rate of three per cent., is estimated at £1,187,660. Of this £237,532 is applicable by law to Local Funds; and a further deduction of £46,513 has to be made for the cost of collecting the tax. The remaining £903,615 forms part of our ordinary Ways and Means; and, in order to meet the annual charge, an equal sum must be forthcoming from some other source.

On the other hand, we have to provide for a large additional expenditure arising from two distinct causes.

The first of these is the great and general rise in prices and wages. This swells the expenditure through the Commissariat contracts; through the rates of compensation to the Native Troops for the dearness of provisions; through the enhanced cost of labour and material for every kind of work; through the demands made upon the Government for an increase of the pay of entire bodies of Native Civ l and Military servants to save them and their families from severe distress. Earnest endeavours are made to combine increased pay with diminished numbers and improved efficiency, but the augmented charge will, notwithstanding, be very heavy. We are in the midst of one of those social changes which mark the progress of Nations. A general increase of prices and wages must be followed by a general elevation of the standard of the public expenditure.

The other cause is the strong and growing demand for improved administration. This could not be fully described without going the round of the Public Departments; but I may particularly allude to the many different ways in which it is proposed to improve the condition of the European Troops, most of which are attended with great cost; to the admitted necessity for strengthening the Judicial system; to the urgent demand for a large expenditure for the improvement of the Jails; and to the heavy liabilities before us connected with the sanitary reform which has been commenced. The annual expense of the Commissions which have been established for the three Presidencies is £20,000, which, of course, bears a small proportion to the cost of the work which has to be done. Some of these demands are of such a nature, that, although they are certain to arise in the course of the year, the amount that will be required cannot be correctly estimated.

On both grounds, therefore—to be prepared for the expiration of the Income-Tax in the early part of the following financial year, and to have the means of meeting demands for improved administration which cannot be postponed—it is more than usually necessary to have a large available surplus of Income over Expenditure.

Our proceedings must also have reference to a state of things which has begun to show itself in an unmistakeable manner.

India was already rich in Indigo, Opium, Saltpetre and other staples of her export trade, when the demand arising from the Russian war gave a great stimulus to Fibres and Oil seeds, and the American war has since raised the inducement to cultivate Cotton to an unprecedented height. But India has a great population to feed; and, as the breaking up of new land is a gradual process, the increased demand for exportable produce could only be met by diverting to its production a large proportion of the land which had been previously employed in raising grain.

Simultaneously with this, Railways and Public Works have been prosecuted at the rate of ten millions sterling a year; whereby the industry of the people has been largely diverted from immediate production to increasing future production.

Consumption has also been greatly stimulated by the abundant means placed at the disposal of the cultivators by high prices, and of the labourers on Railways and other Public Works by high wages.

The result of these combined causes is that there is a serious strain upon the springs of society in some parts of India, like that which took place in Ireland in 1846, and in England in 1847, when such a large number of labourers were employed upon Public Works and Railways. The price of every description of produce, whether for exportation or home consumption, has gone up. Exporters complain that prices are often as high here as in England. Consumers complain of the greatly enhanced cost of every necessary of life; and, as they have so much more to pay for the means of subsistence, they are obliged to stint themselves in every thing else. This is the true explanation of the continued stagnation in the demand for Manchester goods, notwithstanding that the Native manufacture is still falling off. A man must feed himself and his family before he can buy clothes; and, at the present high prices of food, the body of the people, in several parts of India, are barely able to subsist. A fall in the price of Manchester goods would not have much influence in promoting their sale under such circumstances.

The effects upon the labour market are very striking. Although population is congested in some parts of India, there is, in others, a scarcity of labour. For a long time complaints have been received from several extensive provinces that the progress of public works and industrial undertakings is seriously impeded for want of labour. New Roads and Tea and Coffee Plantations are chiefly in thinly inhabited and unimproved parts of the country. Even if the population of India could be equally spread over the whole surface of the Continent, it may be doubted whether the supply of labour would, under present circumstances, meet all the calls that would be made upon it; but, as it is, the obstruction in several important districts is positive and decisive.

Owing to the suitableness of the greater part of the Bombay Presidency for growing Cotton, this state of things is at its height there. An artificial famine has been created. The price of labour and materials has doubled, and Public Works are constructed at a greatly enchanced cost. The most serious symptom of all, however, is that the Government of India has been called upon to sanction a general increase in the pay of the public establishments of the Bombay Presidency, with the certainty that, if the same causes continue, a similar necessity must soon arise for a further augmentation. On the one hand, we are urged to

supply funds, without limit, for the prosecution of Public Works; and, on the other, we are told that the dearness of every necessary of life, which arises, in great degree, from this large expenditure, must be compensated by a corresponding increase of pay to the public establishments. The economical system is almost as much deranged in the Bombay Presidency as it was in Ireland in 1846-47. The rural population in that country was employed upon Public Works to an extent which threatened a disastrous neglect of the ordinary tillage, and 734,000 able-bodied men, representing, at a moderate estimate of the average extent of each family, upwards of 3,000,000 of persons, were struck off the labour lists by successive instalments. We are moving at Bombay in the same circle; and we should take warning in time to avoid the necessity for having recourse to like strong remedies.

The most essential point of all is to observe some moderation in Public Works; to finish what we have begun, and not to crowd the work of several years into one. Works which, when spread over a reasonable period, would be attended with general benefit, may, if they are all put forward at once, convulse society, and fail, after all, owing to their excessive cost, to attain the end intended.

Next to this our object should be to remove, as far as possible, every obstruction to the freedom of trade, as was done in the analogous case at Home. The great embarrassment of the trade of India has always been the want of imports to meet the vast quantity of exportable produce which the country is capable of sending forth. If we desire to relieve the trade of India, and to give free scope to its further extension, we should give all possible encouragement to her imports.

There will be found in the Appendix, pages ii to v, in illustration of these statements—

First.—A comparison of the exports of merchandise from India in 1840-41, 1841-42, and 1842-43, with those of the three subsequent decennial periods;

Secondly.—The Raw Cotton exported for the first eleven months of 1862-63 and 1863-64;

Thirdly.—The prices of Grain in the Bombay Presidency from 1823 to 1863;

Fourthly.—Extract from a Report from the Collector of Khandeish, dated 18th September 1863; and

Fifthly.—Extract from a Report from the Commissioner of Police at Bombay, quoted in a letter from the Government of Bombay to the Government of India, dated the 30th January 1864.

Previously to 1859 the import duty was, as a general rule, five per cent. *ad valorem*. With the exception of certain specified articles, it is now ten per cent.

free course of the general trade through the principal marts. Since their re-introduction in the shape of a municipal tax, the same symptoms have re-appeared. The principle that Town duties are a tax on the consumption of the Towns for whose benefit they are levied, and that they should, on no account, be extended to any article belonging to the transit or general trade, ought to be jealously guarded.

The other items of Receipt are Educational and Charitable endowments; Tolls on Roads, Ferries, and Canals; Cantonment and Bazar Funds; Port Funds; Proceeds of houses and lands which have been transferred to Municipal Bodies; and others too numerous to be described.

As it is impossible that a complete view of the Finances of India can be given without including that portion of the public funds which is locally administered, it is desirable that the Local Fund Estimate and Account should, in future, be appended to the Budget Statement. This year, all that it has been possible to do, has been to call attention to the existence of the Supplementary Budget, and to furnish a rough general Estimate.

Last year I announced that the Government had finally withdrawn from the manufacture of Salt in Bengal. The great increase in the export trade of India has caused extremely low rates of freight from England, and this has resulted in cargoes of Cheshire Salt being delivered at Calcutta at unprecedentedly low prices. In pursuance of the plan which has been so successful at Madras, a siding is to be made from the Calcutta Terminus of the East Indian Railway into the Salt Depôt at Sulkea, so that the Salt may be laden at once upon the trucks for transmission into the interior.

Owing to the low prevailing market price, the sales from the Government stock of Salt, in the current year, actual and estimated, are only 12,34,678 maunds compared with 19,13,978 in 1862-63. The remaining stock belonging to the Government is estimated to amount, at the close of the present financial year, to 67,88,622 maunds or 249,378 tons. The necessity of disposing of this large stock of Salt, both in the interests of the trade and of the Government, has been generally admitted; and, in order that Merchants, knowing beforehand when the Government sales are to take place, and to what extent on each occasion, may make their arrangements accordingly, it has been publicly notified that fifteen lakhs of maunds, or 55,102 tons, are, after a full year's notice, to be sold to the highest bidder in 1865, in such proportions and at such times as may be most convenient to the trade, and the remainder in the following years at the rate of twenty lakhs of maunds, or 73,469 tons, in each year.

I also said that the foundation of a sound financial system, on the English model, had been laid broad and deep by my predecessors, and that what remained

was to extend the application of these principles through the whole field of Income and Expenditure, so as to remould the entire system into one consistent whole. This work has since been in progress in different quarters.

The Military Finance Department has been consolidated with the Military Secretary's Office as its Account Branch. The Public Works system of Account and Audit has been fully enquired into, and every practicable improvement will be made. The English plan of Office organization, which combines annual increase of pay within each class, with promotion by merit from class to class, and proper securities for the admission only of qualified candidates, has been introduced into the Financial, Military, and Public Works Departments. The Police Establishment of the N. W. Provinces, and the N. W. Frontier Preventive Line have been investigated by Colonel Bruce, who is now engaged on an inquiry into the Bengal Police; and the Subordinate Civil Establishments of the Bombay Presidency have been ordered to be revised by the ablest Officers who can be selected for the purpose, with immediate reference to two principles—

1st.—To ascertain by a careful scrutiny, how far the work itself is capable of being simplified and curtailed, by omitting duplicate and unnecessary processes, consolidating official forms, and, generally, by expediting and abbreviating the transaction of business, and

2nd.—To ascertain what is the smallest number of persons by whom the work can be properly done after it has been so revised; what rates of pay are necessary to secure the services of competent persons; and what arrangements should be made in order that the public may have the benefit of a selection of the best candidates for employment.

Steps have been taken to give effect to the recommendations contained in the valuable Report of the Commission of Inquiry into the Commissariat, and a Committee has been appointed to investigate and report upon the entire Subordinate Establishment, European and Native, of the Commissariat, and to propose such measures for its reorganization as may appear to them best adapted to promote the efficient and economical administration of the Department.

The East Indian Railway, in the economical management of which the financial interests of the Government are as much concerned as in that of any Public Establishment, has been carefully investigated, in all that relates to its system of Account and Audit, by Mr. G. N. Taylor, who was afterwards deputed to conduct a similar inquiry into the Great Indian Peninsula and Bombay and Baroda Railways. Mr. Taylor's recommendations have been cordially accepted by the Directors and Officers of the East Indian Railway, and great practical improvements have been made.

The most important work of all is the revision of the general system of Account and Audit. The existing system was established by the East India Com-

pany on the good old, mercantile, double entry principle, but it has since been overlaid and confused by a variety of obsolete entries, irrecoverable balances, and, above all, by a vast number of complicated and unnecessary inter-presidential and inter-departmental advances and re-payments. In the course of the past year, the main principles, whereby regularity and exactness have been established in the accounts of Her Majesty's Government, have been introduced into the Indian Accounts; such as the rule that the Estimates shall be taken for expenditure coming in course of payment within the year, and that every thing shall be debited or credited to the accounts of the year in which the amount is received or paid; that the gross receipts shall be credited to Revenue and the gross expenditure shall be debited to Charge; that expenditure shall be provided for, *as a final charge*, in the Estimates of the Department responsible for the general head of Service, and so forth. The good effect of this has already appeared in the increased uniformity and correctness with which the Estimates now submitted have been prepared. The two Financial Officers who were deputed to India by Her Majesty's Government are now making a searching investigation into all the details of the system of Account and Audit, and it may be hoped that, on the receipt of their Report, the last finish will be put to the reform of our financial machinery, which has now been for several years in progress.

I have alluded to the commercial crisis through which the country has passed only so far as the finances have been affected by it. The Government Note Currency has stood the trial in a very satisfactory manner. So completely is its identity in value with silver established in peoples' minds, that, even at the time of the greatest scarcity of coin at Bombay, Rupees continued to be sent to the Currency Department to be exchanged for Notes. The general stock of specie has been economized by the investment, in Government Securities, of £3,000,000 of deposits on a Note circulation of £5,350,000. Arrangements are in progress for the formation of three new Currency Circles,—one for the North-West Provinces and Oudh, another for the Punjab, and the third for the Central Provinces. The introduction of a gold currency has been recommended by the Chambers of Commerce of Calcutta and Bombay, and the subject will occupy the serious attention of this Government in communication with the Secretary of State. The difficulties are great; but there can be no doubt of the advantages of the measure if it can be satisfactorily effected. It would bind together England, Australia and India in a triangular trade of a highly beneficial kind. The manufactured goods exported from England to Australia would be paid for by sovereigns sent to India to pay for Indian produce exported to England; and the convulsive efforts by which gold is periodically abstracted from the Bank of England, to sweep the Continent of silver for transmission to India, would be sensibly mitigated. The depreciation of gold would be arrested by bringing to bear upon it the power which India has of absorbing the precious metals; and, besides the advantage of a convenient cur-

rency suited to the increasing wealth of this country, the chronic embarrassment of the Indian trade arising from the great excess of the exports over the imports would, as far as possible, be diminished by the firm establishment of an article of import of which there is an unlimited supply, and for which there would be an unlimited demand.

The Hon'ble Mr. Bullen said, that he had listened with pleasure to the able and satisfactory statement of the Hon'ble Member. It was gratifying to find that in spite of an unexpected frontier war, and notwithstanding an equally unexpected falling off of over a million in the Opium Revenue, the Hon'ble gentleman was still able to announce a surplus, and that surplus, not arising from retrenchment of the sums appropriated last year for public works or for education, or from the denial of any legitimate demands for the public service, but from actual increase of the revenue-yielding resources of the country. This was very satisfactory, but it was when the present financial position was contrasted with the financial position of four years ago, that the improvement which had taken place in the interval could be properly appreciated. Then, with a debt which, owing to the expenditure caused by the mutiny, had in three years enormously increased, and with an annually recurring deficit, the revenues of the country were believed to be so inelastic, that extraordinary taxation could alone avert bankruptcy. As a consequence public securities were discredited, and could only be sold at a heavy discount. Now, instead of a deficit, there was a surplus; instead of an annually increasing debt, it had been announced that during the last two years, the debt had been reduced by twelve millions sterling; instead of extraordinary taxation being absolutely necessary, the Hon'ble gentleman contemplated with equanimity the expiry of the Income Tax next year, and with it the loss of a million sterling of revenue; and instead of the public securities being only saleable at a heavy discount, they were now in active demand, both in India and in Europe, at a high premium. Satisfactory, however, as was the retrospect of the past, the prospects of the future were, he believed, even brighter. The Commerce of the country was increasing with unexampled rapidity. Large tracts of land, hitherto waste, were, by the application of European capital and by European energy and enterprise, being rapidly brought under cultivation. Those great arterial lines of Railway communication which had been so long under construction were approaching completion, and last, though not least, by means of the telegraph cable, which had just been so successfully laid by the skill of Colonel Patrick Stewart and the other scientific gentlemen associated with him in that great work, this country would shortly be in direct communication with England. All that India required was peace; peace within and without her boundaries. If the blessings of peace were preserved to her, he

did not doubt that, great as had been the progress made during the last four years, even greater progress would be made during the next four years, and that in all that constituted material prosperity, the India of 1868 would be found as far in advance of the India of the present day, as the India of 1864 was in advance of the India of four years ago. With regard to the alterations which the Hon'ble gentleman proposed to make in the Customs' Duties, he would only say that the reduction of the Duties on all articles now paying 10 per cent. to 7½ per cent. had his warm approval so far as it went; but he regretted the Government had not gone further and reduced those Duties to 5 per cent. He hoped, however, to see a further reduction next year. The revenue which the Hon'ble gentleman would lose by the reduction, he proposed to recover by a re adjustment of the fixed values on which the Customs' Duties on Cotton Piece Goods were levied. This could not be objected to as inequitable. There was no doubt that on the valuation fixed three years ago, before the outbreak of the secession war in America, the Duties which for some time had been paid on Yarn and on Grey Cottons was much below the Duties paid on other kinds of Cotton Goods, on which the Duties were levied *ad valorem*, and no reasonable objection could be urged to such re-adjustment of the tariff of values as would cause the incidence of the Duties to be equal on all kinds alike. He would only further allude to an article which, although not mentioned in the Hon'ble gentleman's statement, he knew had not escaped the Hon'ble gentleman's attention, because the Hon'ble gentleman, had done him (Mr. Bullen) the honor of consulting him in regard to it a short time ago. The article was Saltpetre. The Hon'ble gentleman, when he had consulted him regarding this article, had appealed to the export since the present Duty had been in force, in proof that the export Duty had not interfered with the demand for foreign markets. He (Mr. Bullen) admitted that, taking the exports as a test, it was difficult to make out a case, and he was not, therefore, surprised that Government were unwilling to give up a considerable revenue levied from foreign consumers. But it was nevertheless true that the manufacture of artificial nitre was on the increase, especially on the Continent of Europe, and that it could be produced at a lower price than Indian Saltpetre could be laid down in the markets of Europe. There was danger, therefore, that if this heavy export Duty was maintained too long, the important Saltpetre trade of this country might be placed in some jeopardy. He hoped the Hon'ble gentleman would bear this in mind, and prepare himself for the reduction or abandonment of this Duty at no distant period.

The Hon'ble SIR ROBERT NAPIER said—"I beg permission to occupy the attention of the Council for a moment to do an act of justice. It has been said, and with truth, that it is the tendency of all Government Establishments

to increase in expensiveness. It is certainly true with regard to the Military Establishments of India. Much of this is due to the improving condition of the people: as the social condition of the people improves, their wants increase, and it was justly observed by Lord Hardinge, that 'the Soldier must not be left the only person whose condition is not to keep pace with that of the other classes of society.' It is perhaps one of the most difficult duties of the Departments whose business it is to scrutinize the details of Military expenditure, to discriminate between the increasing demands which are necessary, and those which are not so. It is only just to the Officers of those Departments to say that they have done their work with great vigilance and rectitude. During the past year no less than eleven lakhs of Rupees have been saved by the economical revision of the ordinary expenditure alone. It has been pronounced by Officers of great ability and experience, highly competent to form an opinion, and who had made the armies of India their study, that the expense of the armies should be reduced to twelve millions, and I am happy in being able to say that the estimated net, or actual, cost of the armies, for the coming year, is within that sum, notwithstanding that some very unexpected and extraordinary expenses have been thrown upon the Army Estimates. Much of the credit of this result is due to the Officers of the Departments that I have named, the Military Secretary, the Accountant General in the Military Department, and the Controllers of Army and Commissariat Accounts; and it is only fair that it should be mentioned."

The Hon'ble Sir C. Trevelyan explained that although he entirely agreed in the praise which had been bestowed upon the Military Secretary and the Officers of the Military Account Department for their exertions in keeping down expenditure, it must be remembered that the incidental receipts connected with each of the great Departments, such as Law and Justice, Public Works, Marine, and Military, formed part of the public revenue, and that, according to the English as well as the Indian practice, the expenditure which had to be operated upon, in dealing with the Departmental Estimates, was the gross expenditure. He also said that the attention of the Government had, as observed by the Hon'ble Mr. Bullen, been closely directed to the circumstances of the Saltpetre trade, and that care would be taken not to risk a valuable staple by levying an unsuitable Duty. He further remarked that a virtual bounty was given upon the the production of Saltpetre by not taking any steps to levy the duty of one Rupee four annas a maund upon the edible salt which was educed in the process of manufacture in the Province of Behar, where the great bulk of the Saltpetre was produced.

The Motion was put and agreed to.

The Hon'ble Sir C. Trevelyan having applied to His Excellency the President to suspend the Rules for the Conduct of Business,

The President declared the Rules suspended.

The Hon'ble Sir C. Trevelyan then introduced the Bill and moved that it be taken into consideration.

The Motion was put and agreed to.

The Hon'ble Sir C. Trevelyan also moved that the Bill be passed.

The Motion was put and agreed to.

The Council adjourned.

Calcutta,
The 7th April 1864.

C. BOULNOIS,
Offg. Depy. Secy. to Govt. of India,
Home Dept.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 4th November 1864.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble Claud H. Brown.
The Hon'ble J. N. Bullen.
The Hon'ble Mahárájá Vezeeram Guzzeputty, Rájá Bahádur of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble G. Noble Taylor.
The Hon'ble R. N. Cust.

The Hon'ble MESSRS. TAYLOR and CUST took the oath of allegiance, and the oath that they would faithfully discharge the duties of their office.

REMARRIAGE OF NATIVE CONVERTS BILL.

The Hon'ble MR. MAINE, in moving for leave to introduce a Bill to legalize under certain circumstances the remarriage of Native converts to Christianity, deserted or repudiated by their wives or husbands, said that there was probably no subject which had been longer before the Indian legislature than that to which his motion related. Ever since the Supreme Government of India possessed true legislative power, *i. e.*, since the Act of William the Fourth passed in 1833, there had been always before it some proposal, and generally a multitude of proposals, for giving relief to Native converts to Christianity whose wives persistently refused on religious grounds to cohabit with them. Among the papers in the Legislative Department, there were two separate Bills framed to permit the remarriage of such converts, one of them bearing the name of Sir Charles Jackson, the other that of Sir Barnes Peacock. MR. MAINE's immediate

predecessor, Mr. Ritchie, had just before his death obtained leave to introduce a Bill on the subject, so that the present motion constituted the fourth instance in which positive action had been taken. He (MR. MAINE) ventured to say of this long delay, what could not often be said of delay in matters of government, that it was far from discreditable to those who had caused or acquiesced in it. There was no trace in all the papers which he had read of any carelessness or want of interest. All the officials who had taken part in the discussion had expressed the strongest sense of the importance of the subject, and had manifested the most sincere anxiety to discover some admissible measure of relief; and, indeed, MR. MAINE would say that the documents he had perused, extending over thirty years, went far to exonerate the Government of India from that charge once so often brought against it, that, of all the races and classes committed to its care, none had so little of its tenderness as the converts to its own faith. Still less did the papers disclose any sign of undue timidity on political grounds. Although Lord Canning's Government undoubtedly expressed an opinion, that any law on the subject ought to be a Government measure, neither it nor any other Government or person appeared to have ever thought that, on such a point, the view of the Hindú or Mahomedan part of the population ought to prevail; indeed, the obvious probability was that the matter was entirely indifferent to Natives of India not converted to Christianity.

The reasons of the hesitation which had so often shown itself were of a very different description. First there were those objections which grew out of the moral or religious creed of the persons composing the executive and legislature. Some had thought a law like this doubtful on moral, and others on theological, grounds, and a great number had manifestly been unwilling that, in its first legislation expressly relating to Native Christians, the Christian and dominant race, of which the legislature was then exclusively composed, should place on record anything like a lax or equivocal construction of conjugal obligations. But, doubtless, the chief cause of the delay was the perplexity caused by the extraordinarily various and conflicting proposals of those more immediately interested in removing the grievances of the converts. It was natural that Missionaries and Missionary bodies should look upon the subject under a special aspect. Whenever one of those excellent persons persuaded himself that the remarriage of a convert, whose wife declined to follow him, was not forbidden, he naturally formed some theory to justify his persuasion, and then he invariably pressed the Government to adopt it. MR. MAINE would give two instances of such theories as samples, two of a remarkably large number which had been pressed on his attention. Some of the most active Clergymen and Missionaries in India were of opinion, that unconsummated marriages between children of tender years are void by the law of God, or of nature, and hence they were willing that the law should permit the remarriage of a person married in infancy, but

repudiated by his wife before cohabitation. But they would not go further. There were others again who, holding the more tenable opinion, that the law which governed the solemnization of the marriage ought to govern the dissolution, looked rather to the Heathen than to the Christian rule of divorce, and adopted a theory that, under Hindú and Mahomedan law, a convert to Christianity was *ipso facto* divorced,—in the case of Mahomedans by the express ruling of their religious authorities—in the case of Hindús by a consequence derived from the principle of what may be called religious death. On this theory, there was of course no difficulty in permitting a convert, at least a male convert, to contract a second marriage. There appeared to be in existence at least a score of such speculative views of the question, some altogether distinct from the doctrines which he (MR. MAINE) had described, some involving more or less modification of them. It was inevitable that the Government, entertaining the greatest respect for the Missionary view of the subject, should hesitate to make a selection between these conflicting theories—to take its stand on one of them, and to introduce a Bill confined to the limits of that one theory. Hence, in their embarrassment, successive Governments had been tempted to leave the question alone, perhaps in the same hope which seemed to possess not a few of the Missionaries themselves, the hope that the knotty point, if you did not touch it, would solve itself. Now, unquestionably, there was in politics such a thing as judicious inaction ; some questions when left to themselves settled themselves, but not, as MR. MAINE thought, when the *status quo* contradicted, so to speak, a law of nature. The true mode in which this particular question had been solving itself had been brought out by that valuable law, the new Marriage Act—valuable, though it might require some modification—framed by Mr. Anderson and passed by the Council in the Spring. That law, the Council were aware, imposed penalties on persons celebrating marriages not in accordance with its provisions, but a remarriage under the circumstances to which MR. MAINE's Bill would relate was not allowed by Mr. Anderson's Act, and hence to celebrate it was a punishable offence. The remonstrances which this state of the law had elicited shewed, that a considerable number of the Missionaries did habitually celebrate these marriages, and probably, rather than tolerate open concubinage among their converts, they would feel it their duty to defy the law and continue to solemnize such marriages at the risk of punishment. This was in itself an urgent reason for no longer postponing legislation, unless the Council should be positively of opinion that the remarriage of converts under these circumstances ought not to be permitted for some reason of religion, morals or policy. MR. MAINE for his part had convinced himself that a measure of relief was not only admissible but obligatory, but, before he stated the grounds on which he rested his view, he would say at once that he entirely objected to any enactment adjusted to the limits of such theories as he had been attributing to the Missionaries. The Council would remember that any such enactment would in fact amount to

a legislative affirmation of the speculative basis of the theory selected for application. Now he (MR. MAINE) held that it was not the business of that Council to affirm propositions of law, and still less of theology. Their duty was not to say what the law was, but what it ought to be; and, on the other hand, there was an obvious incongruity (he might almost say indecency) in that Council, composed as it was, saying what was or was not sound Christian theology. The only aspect under which they could consider questions was their moral or political aspect; and, no point of policy here arising, the argument which he (MR. MAINE) would employ to justify his Bill would wholly derive its force from moral considerations. It was true that, although his view was quite independent of purely theological reasoning, it would be difficult or impossible for him to place it fully before the Council without seeming to travel into the province of theologians; but the fact was, it was necessary for him to go into the history of the controversy which had always existed on the subject in the Christian world, and, in order to do that, he must state shortly the theological views which from time to time had been adopted by the disputants.

He would first observe that his endeavours to acquaint himself with the views actually entertained by the various sections of the Christian community in India on this subject had been greatly facilitated by an interesting series of papers, the records of the Panjáb Missionary Conference. All the opinions current among the Missionaries in any part of India, were, he believed, more or less indicated in that volume. At the same time, the discussion at the Panjáb Conference had, as a complete account of the matter, the serious defect of being wholly confined to the modern and recent aspect of the controversy. All the speakers appeared to have been ignorant, or to have designedly omitted all mention, of the fact that the question of the remarriage of Christian converts had an ancient as well as a modern history. The truth was that the controversy was one of the oldest of those which had ever agitated the Christian church, and it had only lost its interest through the conversion of the entire Western World to Christianity, and the consequent cessation of marriages between Christians and Heathens. He (MR. MAINE) would presently show how important a bearing this fact had on the argument for the Bill. He would now observe that the only difference between the controversy as now debated between Indian Missionaries, and the controversy in its ancient stage, consisted in the different Scriptural grounds on which the disputants based their reasoning. In the early Christian Church, the dispute turned wholly upon the proper application of an analogy. It was conceded on all sides that divorce was lawful on the ground of adultery; it was then contended, in conformity with a metaphor common in early Christian times, that Heathenism was spiritual adultery; and hence it was concluded by those who took the affirmative side, that obstinate persistence in Heathenism on the part of husband or wife was an adequate justification of divorce. MR. MAINE did not

assert that this argument was always thought satisfactory, but he did assert, as a matter of history, that the preponderant weight of authority was always in its favour. How strong was the persuasion which it carried with it, might be seen from a passage which he had with him, from a writer so old that portions of his treatise were often found inserted at the end of the oldest manuscripts of the New Testament—the author of the book called the Shepherd of Hermas. (The substance of the passage was, that adultery was not only corporeal but spiritual, and that Heathenism, being spiritual adultery, justified divorce). MR. MAINE cited that passage, not to insist on its cogency, but to show the antiquity of the theological opinion with which the Bill was in harmony. And the reason for bringing into prominence the opinions of the early Christian Church was his strong impression, that many of the speakers at the Panjáb Missionary Conference were actuated by a half-conscious fear, that it was only the temporary convenience of the moment which was producing a belief in the lawfulness of remarriage by converts. They appeared to distrust a conclusion which was so obviously expedient in the interest of Christian missions. But when it was once seen that the opinion with which the Bill harmonized was certainly not the fruit of the peculiar position of Christians in India, when it was seen that this opinion had been strongly held ever since the first appearance of Christianity in the world, and had only been lost sight of through the Christianization of the West, they would probably display less timidity in approaching the question, and yield up their minds more unreservedly to the more modern, and doubtless in some eyes the more satisfactory, arguments in favour of the lawfulness of re-marriage. Sir Charles Jackson had correctly stated that those modern arguments turned entirely on the interpretation of a single text—"But, if the unbelieving depart, let him depart; a brother or sister is not under bondage in such cases; but God hath called us to peace," 1 Corinth. VII, 15. Now it would not be expected that he (MR. MAINE) should offer to the Council any theological commentary or criticism on that passage, but there were two remarks which he would wish to make, not as a theologian, but as having some acquaintance with legal antiquities. It was said by some opponents of the measure, that the text justified at most a divorce a *mensâ et thoro*—a judicial separation. That view involved an anachronism The only divorce known in the world when the words were written was an absolute divorce—*a vinculo matrimonii.* MR. MAINE, speaking from recollection, would say that divorces *a mensâ* were of later date by some hundred years. Other persons who doubted the lawfulness of the measure expressed an opinion, that the words of the passage, whatever were their meaning, were not sufficiently marked, distinct and strong to warrant the conclusion drawn from them. MR. MAINE, still speaking as a lawyer, asserted that stronger language could not have been used. The words employed were the technical words of Roman Law implying absolute divorce. He might appeal to the school-day recollections of the European Members of Council, who would remember that the ordinary

formula of divorce was, *abi, discede*, or, as the phrase would run, when turned into the third person, *let him depart*. The writer of the passage was, as everybody knew, a Roman citizen; he was plainly well-acquainted with the Roman Law of Persons, under which he lived, and here he had simply translated into Greek the usual legal phrase implying that absolute divorce which carried with it the power of remarriage.

The first conclusion therefore which he (MR. MAINE) drew was, that the measure which he asked permission to introduce would neither offend the opinions of the whole Christian world, nor the better and more instructed opinion of any Christian sect or community. The fact was that, taking Christendom as a whole, there was even a greater weight of authority in favour of the remarriage of converts under the circumstances contemplated by the Bill, than in favour of the principle of divorce on the ground of adultery. For, as was well known, the Roman Catholic Church did not permit divorce on the ground of adultery; it did however permit the remarriage of converts on the authority of the text he had cited, as he (MR. MAINE) had gathered from some documents which had been forwarded to the Government from the Roman Catholic congregations in the south of India. He did not pretend to speak with any certainty of the Roman Catholic doctrine on the subject, but he believed it to be founded on the assumption that it was at the option of the Church to recognize heathen marriages, and that persistence in Heathenism justified non-recognition.

The preliminary difficulty which would have arisen from the repugnance of the Christian community being thus removed, the next thing was to enquire what positive reason there was for interference on the part of the Council. On this point he (MR. MAINE) would reason as follows. It was absolutely necessary to adopt, in India, the theory which obtained in most European countries, of a distinction between the secular or civil and the religious or ecclesiastical power. It needed only to examine the composition of the Council to see that no other doctrine than this could possibly be propounded in it. The Council then, representing the secular power, had the right to guide itself by reasons of morality as distinguished from religion, for nobody had ever doubted that the purely moral view of questions was, to employ the figure which had been so often used to illustrate this distinction between the powers, one of the things which are Cæsar's. Now he (MR. MAINE) asserted, that the law of marriage in India, in its application to Native Christians, had a tendency to produce—he very much feared it did actually produce, but at all events it had a distinct tendency to produce—immorality. The state of things was this. The great majority of Hindús were married before they reached the age of reason. Converts to Christianity were, however, brought over by the operation of reason, and the condition of Native society was such, that reason had necessarily much greater influence over one sex than the other. Hence, the tendency of the law in its present state

was to produce a celibate class. Now, MR. MAINE would lay down, even of European countries, that a law which by its direct incidence assisted in creating a class condemned to celibacy was immoral and bad. And if that was true of Europe, how did matters stand in India? The subject was one which could only be touched upon lightly, but it was certain that all the essential differences between Oriental and Western Society tended to augment the immorality of the law in India. They must not forget that touch of asceticism which European Societies, even Protestant Societies, had derived from the middle and early ages, one result of which was that, to a European, a life of prolonged celibacy seemed intelligible and tolerable. But was it necessary to prove elaborately that, to an Oriental trained in the zanáná, the very conception of such a life was probably unintelligible, monstrous and against nature? MR. MAINE well knew that some of the Missionaries asserted, that their converts underwent a moral purification which rendered the trial endurable to them. That might be true in some, perhaps in many cases; but he contended that the assumption of its truth was one which the secular power had no right to make. It could only look at the law in its normal and ordinary application to Oriental nature.

The measure therefore would be an interposition of the State, or Civil power, from its own point of view. It would be a law of liberty and constrain no man's conscience. Nobody would be compelled to remarry converts, if he had scruples on the point; but, on the other hand, the State would decline to impose penalties on a Clergyman remarrying them. People might take what religious view they pleased of the position of the convert remarried; but the law would not refuse him or her civil conjugal rights, and the children would have the civil rights attending legitimacy. If the doctrine or discipline of any Christian community forbad remarriage while the first wife was alive, its Ministers need not celebrate remarriages: their power to keep the convert from remarriage without risk to morality would be a strong proof of their influence over him, it being understood that the responsibility of refusing to remarry rested on them, and not on the State. On the other hand, the principle of the Bill would give room for all partial theories of the lawfulness of divorce. Any sect, persuaded that divorce was lawful up to a certain point or under special circumstances, might, within the limits of the law, work out its own theory.

The Bill, which was not yet completed, would be founded partly on Sir Charles Jackson's draft, and partly on Sir Barnes Peacock's. It would not permit remarriage till a considerable interval had elapsed, which would be reasonable evidence of final desertion or repudiation. It would provide for the examination of the parties by a Judge, and he (MR. MAINE) thought it would allay some scruples, if the proceeding in the first instance took the form of a suit for the resumption of conjugal society.

It would also be a desirable addition to the older drafts, if provision were made for the convert having the opportunity of trying his own persuasions on his wife, in an interview not overlooked or controlled by her family. There would be many difficulties of detail, but he hoped they could be overcome. It was, he might say, a peculiarity of the subject, that points which seemed at first sight immaterial proved to be of great importance, while difficulties apparently of the greatest magnitude turned out to be no difficulties at all. For example, the language of the Bill must be carefully adjusted to the theory of its secular origin; and it was most essential to avoid the mention of divorce, for otherwise the large Roman Catholic community in Southern India, numbering now nearly a million souls, would lose the benefit of the law. On the other hand, the contingency of a convert having several heathen wives, which at first sight appeared most difficult to deal with, was in fact scarcely worth taking into account, as the classes from which the converts came were practically monogamist.

Considering that the law of England, as applied in England, recognized no religious scruple however strong, or personal distaste however unconquerable, as a reason for refusing to resume conjugal society—considering, on the other hand, that everybody in India shrank from absolutely compelling the heathen wife to rejoin her husband—MR. MAINE thought that this Bill followed as a consequence. Otherwise they were open to the reproach that, while they were creating a special class by their direct action on the country—partly by the energetic efforts of Missionary Societies, partly (he would hope) by the exhibition of the most eminent ingredient in their own civilization,—they laid on it a burden which they themselves, in their own country, did not so much as touch with the little finger.

The Motion was put and agreed to.

ADVOCATES AND ATTORNEYS (N. W. PROVINCES) BILL.

The Hon'ble MR. HARINGTON introduced the Bill to regulate the admission, removal and remuneration of Advocates and Attorneys in the Civil and Criminal Courts and Revenue Offices of the North-Western Provinces of the Presidency of Bengal, and moved that it be referred to a Select Committee with instructions to report in a fortnight. He said "This Bill was introduced at the request of the Hon'ble the Lieutenant-Governor of the North-Western Provinces. The object of the Bill was to make suitable provision for the appointment of duly qualified persons to act as Vakeels or Advocates and as Mookhtárs or Attorneys in the civil, criminal and revenue Courts and offices in the places to which the Bill would apply, and for the remuneration and removal of such persons. At present there was no law, nor were there any rules,

so far as he knew, for regulating the appointment and removal of Mookhtárs in the Courts and revenue offices in the North-Western Provinces, and the consequence was, that numbers of utterly unfit persons assumed the office to the serious injury of the persons employing them, and often to the great inconvenience and discredit of the Courts and offices in which they practised. This had been found to be particularly the case in the Criminal Department. As regarded the office of Vakeel, Act XVIII of 1852 not having been extended to the North-Western Provinces, the only Regulation relating to the appointment and removal of Vakeels in force in those Provinces was Regulation XXVII of 1814. Since that Regulation was passed, as the Council were aware, the constitution, character and procedure of the Civil Courts in the North-Western Provinces, as elsewhere, had been entirely changed, and, however suitable the Regulation might have been at the time of its promulgation, it was felt that it was altogether unsuited to the existing state of things. The Bill, now introduced, repealed such parts of Regulation XXVII of 1814 as were still in force, and following, to some extent, Her Majesty's Letters Patent for the establishment of High Courts of Judicature at Calcutta, Madras and Bombay in respect to the appointment of persons to act as Advocates and Attorneys in those Courts, it proposed that the Sudder Court and Board of Revenue should, for their respective departments, have power to frame rules for the admission, removal and remuneration of Advocates and Attorneys in the civil, criminal and revenue Courts and offices in the North-Western Provinces, and that the rules so framed after being approved by the Hon'ble the Lieutenant-Governor, should have the force of law. The Bill would not interfere with the right of any one to appear and prosecute or defend any civil, criminal or revenue case in person, instead of employing an Advocate or Attorney. The Bill also maintained the present rule, under which, subject to certain conditions, one of which related to the language to be used, every Barrister and Attorney on the roll of any of Her Majesty's High Courts was entitled as such to appear, plead and act on behalf of any other person in any civil, criminal or revenue Court in the North-Western Provinces. The Bill further proposed, for special reasons, and with the sanction of the Court, to suffer appearance by an Agent, though the Agent was not an authorized Advocate or Attorney. This privilege was formerly allowed, but, for some reason with which he was not acquainted, it was withdrawn. He was not aware that the privilege was abused. It was highly prized by the Native community, particularly by the higher and more respectable classes, and a wish had been expressed in many quarters for its restoration. It was proper he should mention that since the publication of the Bill, a communication had been received from His Honour the Lieutenant-Governor of Bengal, expressing a desire that the Bill should be extended to the territories under his government beyond

the town of Calcutta. The letter from the Lieutenant-Governor and the correspondence which accompanied it clearly proved that there was the same necessity for some legislative enactment for the Lower Provinces of Bengal, of the nature of that now proposed, which had been shown to exist in the North-Western Provinces, and should the Council allow the Bill to be referred to a Select Committee, he should have great pleasure in proposing in Committee the introduction of a section which would authorize the extension of the Bill not only to the territories under the Government of Bengal, but also to the Panjáb, the Central Provinces, Oudh and British Burma, whenever such extension might be considered desirable by the Local Governments of those places. The Bill with the Statement of Objects and Reasons having already been published in the official Gazette, he proposed that the Select Committee should be required to make their report in a fortnight."

The Motion was put and agreed to.

OATHS OF JUSTICES OF THE PEACE BILL.

The Hon'ble MR. MAINE introduced the Bill to substitute certain declarations for the oaths of qualification taken by Justices of the Peace, and moved that it be referred to a Select Committee with instructions to report in a fortnight. He said that it was singular that while the Indian legislation on the subject of oaths was very advanced, perhaps, indeed, irrationally advanced, no provision had yet been made for relieving Europeans from their conscientious objections to taking the several oaths, including the oath regarding transubstantiation, hitherto required as a qualification for the office of Justice of the Peace. The effect of the present Bill was, that Justices of the Peace would give the same pledges in substance as the oaths taken to-day by the new Members of Council, and it simply required a solemn declaration that the persons qualifying would bear true allegiance to the Queen, and would faithfully discharge the duties of a Justice of the Peace.

The Motion was put and agreed to.

ÁBKÁRÍ ACTS EXTENSION BILL.

The Hon'ble MR. MAINE also introduced the Bill to provide for the extension of Act XXI of 1856 (to consolidate and amend the law relating to the Ábkárí Revenue in the Presidency of Fort William in Bengal) to the Provinces under the control of the Lieutenant-Governor of the Panjáb, and moved that it be referred to a Select Committee with instructions to report in a fortnight. He said that we had an Ábkárí Revenue Act (XXI of 1856) with its supplement

(XXIII of 1860), which applied only to the Bengal Presidency. We had another Act which enabled the Governor General in Council to extend the provisions of these Abkári Acts, but only to such Provinces as were under the immediate administration of the Government of India. Now the Panjáb was neither part of the Bengal Presidency, nor was it under the immediate administration of the Government of India. The two Abkári Acts, therefore, did not apply to the Panjáb. Its Government, however, was most anxious that these Acts should be extended to that territory. The present Bill had therefore been prepared and introduced in order to comply with their wishes.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill to regulate the admission, removal and remuneration of Advocates and Attorneys in the Civil and Criminal Courts and Revenue Offices of the North-Western Provinces of the Presidency of Bengal—His Honour the Lieutenant-Governor of Bengal, and the Hon'ble Messrs. Harington, Maine and Cust.

On the Bill to substitute certain declarations for the oaths of qualification taken by Justices of the Peace—The Hon'ble Messrs. Harington and Maine.

On the Bill to provide for the extension of Act XXI of 1856 (to consolidate and amend the law relating to the Abkári Revenue in the Presidency of Fort William in Bengal), to the Provinces under the control of the Lieutenant-Governor of the Panjáb—The Hon'ble Messrs. Harington, Maine, Taylor and Cust.

The Council then adjourned.

WHITLEY STOKES,

Offg. Asst. Secy. to Govt. of India,
(*Home Dept., Legislative*).

CALCUTTA,
The 4th November 1864.

Government Central Press—No 67 L D—14-7-77—60.

Abstract of the Proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 11th November 1864.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble Claud H. Brown.
The Hon'ble J. N. Bullen.
The Hon'ble Mahárájá Viziarám Gajapati, Rájá Bahádur of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble G. Noble Taylor.
The Hon'ble W. Muir.
The Hon'ble R. N. Cust.

The Hon'ble MR. MUIR took the oath of allegiance, and the oath that he would faithfully discharge the duties of his office.

NEW CIVIL PROCEDURE BILL.

The Hon'ble MR. HARINGTON introduced the Bill for consolidating and amending the laws relating to the procedure of the Courts of Civil Judicature in British India, and moved that it be referred to a Select Committee. He said the remarks, with which he would accompany the introduction of this important Bill, must necessarily be, to a great extent, a repetition of what had already appeared in the Statement of Objects and Reasons, which was published with the draft Bill in the official Gazette in the early part of the year, and a copy of which was in the hands of Hon'ble Members.

As the Council were aware, the Code of Civil Procedure, the revision of which was now proposed, was originally prepared in England by a Commission appointed by Her Majesty under the authority of an Act of Parliament. Any opinion which he might express upon the result of the labours of the Commission, so appointed, could carry with it very little weight; but he could not

refrain from observing that he believed it to be impossible for any one, who had ever presided or practised in a Court of Justice, or who possessed any knowledge of Judicial Procedure, to read the Code prepared by Her Majesty's Commissioners without feeling the highest admiration of its merits, or without being struck with the immense improvements which it made in the Codes of Procedure of the three Presidencies, whose places it was intended to take. The reforms proposed by the Royal Commissioners were in their character comprehensive and fundamental. They abolished those interminable written pleadings of the old Code, which, replete generally with irrelevant matter and constant repetitions, wasted the time, and exhausted the strength of the Judges, who were compelled to listen to, and often to translate them; and, to quote the words of one of the learned Judges of the High Court at Calcutta, who having sat for some time for the disposal of cases coming before the Court in the exercise of its ordinary original Civil jurisdiction had had ample opportunities of observing the working of the Code, "they swept away effectually the technicalities which so often defeated justice, and had enabled the Courts to try every case brought before them on the merits with advantage to the suitors."

Such being the character of the Code, as prepared by the Royal Commissioners, it might have been expected that it would have been accepted by the legislature of this country in its integrity and at once passed into law, and he had no doubt that this would have been done had the Code been intended to apply only to Courts presided over by Barristers or Judges trained to the law. But the reverse of this came to be the case. The Code, as it was received from England, contained a Chapter for the constitution of High Courts at Calcutta, Madras and Bombay, and it was intended that a certain number of the Judges of those Courts should be Barristers of England or Ireland, or Members of the Faculty of Advocates in Scotland of not less than five years' standing; but it was considered expedient, for reasons with which it was not necessary for him to trouble the Council, to postpone for a time the establishment of High Courts such as had been proposed by the Royal Commissioners. This led to the Chapter relating to High Courts being struck out of the Code. A section was also introduced into the Code expressly exempting the late Supreme Courts at Calcutta, Madras and Bombay from its operation. The consequence was that the Code, as passed into law in this country, was made applicable only to the Indian Courts as contradistinguished from Courts established by Royal Charter; in other words, its operation was confined to Courts, the presiding Judges of which, whatever might be their other qualifications for the office, had generally not had the advantage of a legal training, and one of the first points which had to be considered

by the Select Committee to which the Code was referred for report, was whether for Courts constituted as the Courts in the Mofussil were constituted, the Code went into sufficient detail, or whether it did not leave too much to judicial discretion, or to the discretion of the Judge. Having had the honour of a seat in the late Legislative Council at the time the Code, as prepared in England, was under its consideration, he was able to say that, however willing the Members of that Council might have been to adopt the Code with little or no alteration for Courts presided over by trained Judges, they were satisfied that they could not safely do so as regarded the Courts presided over by the Native Judges, particularly the Munsifs' Courts, which form the great majority, or about four-fifths of the Civil Courts of India. It was known that many of the Munsifs obtained their appointments to the Bench without any previous official training and without their having had any practical acquaintance with judicial proceedings, and the Council felt that to give to young and inexperienced Judges a wide discretion in the way of procedure could be followed by only one result. Endless varieties of practice would be introduced according to the views of individual Judges, and irregularities would be committed, for the prevention and correction of which it would be necessary to allow an appeal from almost every order of any consequence passed during the pendency of a case. But the multiplication of appeals, particularly of what were called interlocutory appeals, was a serious evil. Their effect, he need scarcely say, was not only to entail considerable expense upon the parties, but very materially to delay the final decision of cases, and it was hopeless to expect that any Code of Procedure which allowed such appeals to any extent, could be either economical or expeditious. In order, therefore, to avoid the evils which were certain to flow from allowing too wide a discretion, it seemed to the Indian legislature that there was no alternative but to enlarge or supplement the Code as prepared by the Royal Commissioners, and to go into a little more detail for the guidance and direction of the Mofussil Courts than the Royal Commissioners had thought necessary. He believed that this was a true explanation of the reasons of many of the alterations made in this country in the Code as prepared by the Royal Commissioners, and of the nature of those alterations. If any one would take the trouble of comparing the Code as passed in this country with the Code as prepared by the Royal Commissioners, he thought it would be found that the alterations made by the Indian legislature were for the most part in the direction which he had mentioned, and that they related chiefly to matters of detail. So far as mere procedure was concerned, the Indian legislature were most anxious to maintain, and he believed that they had maintained, the fundamental principles and the essential features of the Code as prepared by Her Majesty's Commissioners. They fully recognized the importance of the objects aimed at by the Royal Commis-

sioners in the Code framed by them, viz., to secure greater expedition, greater certainty and less cost, and in the alterations made by them, they kept those objects steadily in view. And here, as bearing upon this part of his remarks on the introduction of the present Bill, he would quote an observation of the Commissioners on practice and pleadings, by whom the celebrated Code of New York was prepared. They said "in drawing up a Code of Civil Procedure, it must be a question of embarrassment how far it is wise to go into details. There are two opposite difficulties to be avoided; on one hand is the danger by provisions too general of leaving a wide space for judicial discretion, on the other, equal danger by going into minute details of making the practice inflexible and intricate, increasing the risks of mischance and leaving unprovided for whatever particulars were unforeseen. What is desired is a middle path between a judicial discretion too wide for safety on the one hand and too narrow for convenience on the other." Looking to the character and constitution of the Courts for whose use alone the Code, as passed, was intended, he ventured to think that the Indian legislature had been so fortunate as to discover the middle path mentioned by the Commissioners who prepared the Code of New York. He had never heard any complaint that the Code of Civil Procedure, as now in operation, entered into too great detail, and he was able to say that when alterations had been asked for, they had generally been in an opposite direction. He thought that the Royal Commissioners, by whom the Code had originally been framed in England, and the Indian legislature, which passed the Code into law with certain alterations and additions, might well be satisfied with the measure of success which had attended their labours. The Code had now been in operation for some years in all parts of British India except the territories under the government of the Punjab and two or three Provinces, to which, owing to their rude and backward state, it had not as yet been thought advisable to extend its provisions, and a universal testimony had been borne in its favour. The reports received from the places in which the Code was in force all agreed that it was working remarkably well and giving very general satisfaction. He willingly admitted that the larger portion of the credit of this success was due to those by whom the Code was originally prepared, that was to say, Her Majesty's Commissioners.

He would now proceed to state the reasons which had appeared to render a revision of the Code at this time necessary, and which had led to the preparation of the present Bill. He believed that every one who had at any time been engaged in the preparation or revision or in the working of Codes, whether of procedure or substantive law, would readily admit the necessity of their undergoing a periodical revision both to adapt them to altered circumstances and

for the rectification of errors. Lord Brougham had justly observed, "As long "as men, including lawyers, are fallible, so long their legislative labours "require correction and elucidation;" and the Royal Commissioners who framed the first Chapter of the Indian Civil Code, which would shortly be submitted to the Council, said :—

"We agree with the framers of the Penal Code in thinking that the enacted law ought, "at intervals of only a few years, to be revised and so amended as to make it contain as com- "pletely as possible, in the form of definitions, of rules, or of illustrations, every thing which "may from time to time be deemed fit to be made a part of it, leaving nothing to rest as law "on the authority of previous judicial decisions. Each successive edition after such a revision "should be enacted as law, and would contain, sanctioned by the legislature, all Judge-made "law of the preceding interval deemed worthy of being retained. On these occasions, too, the "opportunity should be taken to amend the body of law under revision in every practicable "way, and especially to provide such new rules of law as might be required by the rise of new "interests and new circumstances in the progress of the society."

If it were granted (as he believed it must be) that all Codes required revision after certain periods, then he thought it would also be admitted that the first revision of a Code should take place at a shorter interval than any subsequent revision, since it must generally be during the earlier years in which a Code was in operation that any defects or omissions in it were most likely to appear or to be brought to notice.

Notwithstanding what he had just said in favour of the periodical revision of Codes of Procedure and of substantive law, he should not have taken upon himself to propose, at this particular time, a revision of the Code which now regulated the proceeding of the Civil Courts throughout the British territories in India, with exception to the few places which he had mentioned, had the sole object of the Bill, prepared by him, been to supply omissions or to cure defects brought to light in the working of the Code during the period that had intervened since its introduction, or to remove doubts which had arisen as to the intent and meaning of some of the sections. Were this the only purpose for which legislation was now required, he might have been content to allow the Code to remain in operation for some further time before any general revision was attempted. But during the period that had elapsed since the Code became law, great and important changes had taken place in the Judicial agency of the country as well as in the substantive Criminal law in its relation to the administration of Civil Justice. As noticed in the Statement of Objects and Reasons published with the Bill, acts committed in the Civil Courts, or in connection with the processes of those Courts, which before the passing of the Indian Penal Code were not offences, had by that Code been made offences, and were now punishable by the Criminal Courts. It had been found necessary

to enact rules showing by what Courts these acts were to be taken cognizance of and how they were to be brought before the Courts who were to try them. The Supreme and Sadr Courts at the three Presidencies had been abolished, and their places had been taken by High Courts, the proceedings of which on the Civil side, except in the exercise of their testamentary, intestate and matrimonial jurisdiction, were required to be regulated by the Code of Civil Procedure. The Office of Master, in which a large and very troublesome portion of the business which came before the late Supreme Courts was performed, had been done away with. Courts of Small Causes had been established in many parts of the country beyond the limits of the Presidency Towns, the proceedings of which were also required to be regulated generally by the Code of Civil Procedure. The Code had been extended to many places not subject to the general Regulations, such as the Central Provinces, Oude and British Burmah, the circumstances of which were peculiar, but not being known to the framers of the Code, they had made no provision to meet them, and under the operation of an Act recently passed, the offices of Hindú and Mahomedan Law Officers had been abolished, and the Courts would no longer have those officers to apply to for an exposition of the law when questions of inheritance and succession, and other questions requiring to be determined according to Hindú or Mahomedan law arose in suits coming before them.

These and other changes had already led to the passing of several Acts to amend the Code of Civil Procedure, and legislation was called for on many points connected with the procedure of the Courts, particularly the High Courts. One of the Acts passed to amend the Code was to some extent a consolidating Act, but still the laws constituting the Code of Civil Procedure were much scattered, and further legislation, as already noticed, being necessary, it seemed desirable, instead of adding to the number of Acts by which the Civil Courts were to regulate their proceedings, that the opportunity should be taken to pass a single or consolidating Act, which should be complete in itself, and which should amend whatever experience might have shown to be defective in the existing Code.

Immediately after the establishment of the High Court of Judicature at Calcutta, it was found necessary to introduce a temporary Bill to provide for the levy of fees and stamp-duties in proceedings before the Court, and to suspend the operation of some of the sections of the Code of Civil Procedure in their application to the Court.

It was pointed out at the time of the introduction of the Bill, that when the Indian legislature passed the Code of Civil Procedure (from the operation of

which, as he had already mentioned, the late Supreme Courts had been expressly exempted) it contemplated that a separate Code of Civil Procedure would be prepared for the High Courts, whenever they should be established; and further legislation was promised as soon as the High Courts had been established a sufficient time to admit of an opinion being formed as to whether any, and what other, alterations of the existing Code were necessary. The present seemed to be a fitting time for fulfilling the promise thus given.

On the establishment of the High Courts, and the extension to them, without any modifications, of the Code of Civil Procedure, which was ordered by the Letters Patent, it was apprehended by many persons that the Code would be found unsuited to the constitution of the Courts and to the suits coming before them. He had shared those apprehensions, but he was happy to think that they had proved altogether unfounded, and, for himself, he was quite prepared to admit that the extension of the Code to the High Courts was a wise and politic measure. He held in his hand a paper written by a member of the legal profession at Calcutta in large practice, who had watched the working of the Code in the High Court with much interest, and who had lately favoured them with some valuable suggestions for its improvement. The writer said—"The Code of Civil Procedure" (Act VIII of 1859 and the amending Acts) "has undoubtedly worked infinitely better in the original jurisdiction of the "High Court than could have been anticipated. In some respects, as for "instance, where discovery is required, it is defective, and the procedure in "heavy cases is sometimes too summary; this, however, depends a great deal "upon the Judges; and upon the whole, I think substantial justice is done to "both plaintiffs and defendants. Suits are certainly tried more speedily than "heretofore, and when the Court-fees, which are now unduly high, are reduced, "I think the Court will be cheap as well as expeditious." He would here repeat a remark made by him in the Statement of Objects and Reasons, viz., that it was no doubt owing in a great measure to the skill and ability with which the learned Judges of the High Courts, aided by an intelligent Bar, had worked the Code, and had adapted its provisions to the suits that had come before them, that these favourable results had been obtained. He felt that it must be a source of satisfaction to them to think that the revised Code, should it become law, would enjoy the same advantages in this respect as the Code whose place it was intended to take.

Before noticing the principal alterations proposed by the Bill, he wished to point out that, although the Bill, if it became law, would repeal the present Code, the repeal would, to a great extent, be merely nominal. The consolidation of a number of laws in a single Act necessarily involved the repeal of all the laws to be consolidated. There could be no consolidation without going through

the form of repeal, but it would be satisfactory to the Royal Commissioners, by whom the present Code was framed, to the Members of the late Legislative Council, who took part in passing the Code into law, and to all others who felt an interest in the Code, to be assured that the greater part of the sections of the present Code were re-enacted in the Bill prepared by him, and that the fundamental principles of the present Code were most carefully preserved.

Mr. Harington, after noticing the principal alterations which the Bill would make in the present law as detailed in the Statement of Objects and Reasons, went on to remark that the only other addition to the existing Code proposed by the Bill which it seemed necessary for him particularly to notice, had reference to suits brought to enforce the performance of any one or more acts under a contract, without waiting for the time when the whole of the acts required to be performed under the contract ought to have been performed. The part of the Bill referred to had been taken with some modifications from the Bill prepared by his Hon'ble and learned colleague Mr. Maine, for the improvement of the administration of Civil Justice in respect of suits of small value, and published some time ago in the official Gazette. The Code of Civil Procedure seemed to him the fitter place for the provisions to which he was referring, if they were to become law, and they had been introduced into the present Bill in the form in which they now appeared with his Hon'ble colleague's entire concurrence. It was due to his Hon'ble colleague that he should leave him to state to the Council the objects and reasons of the sections. This, he need scarcely say, his Hon'ble colleague would do with much greater ability and much more to the satisfaction of the Council than he (Mr. Harington) could. As connected with the sections in question, he might mention that he intended in Committee to move that the mesne process provided by some of the sections should be allowed in suits for the specific performance of contracts only on registered contracts.

Mr. Harington concluded by expressing his obligations to the gentlemen who, while the Bill was under preparation, had assisted him with advice and suggestions. He named the Hon'ble and learned Chief Justice of the High Court at Madras, Sir Adam Bittleston, one of the Puisne Judges of that Court, Mr. Levinge, one of the Puisne Judges of the High Court at Calcutta, Mr. Couch, one of the Puisne Judges of the High Court at Bombay, the Judges of the Sadr Court at Agra, Mr. J. Strachey, the President of the Sanitary Commission at Calcutta, and lately Judicial Commissioner for the Central Provinces, and Sayud Ahmad Khán, late Principal Sadr Amín at Ghází-pur. These gentlemen, amidst the arduous duties of their Courts, had found time to revise the Bill before it was published, and he gladly availed himself

of the present opportunity of thanking them for the valuable notes and suggestions which they had been good enough to send him. He added that suggestions were reaching the Council daily from all quarters in consequence of the publication of the Bill, and the requisition made for the opinions of the local officers upon it, and assisted by these, he trusted that should the Council assent to his motion, the Select Committee would be able to present to the Council a Bill which they would have no difficulty in accepting and in passing into law, and that no further revision of the Code would be necessary for many years.

The Hon'ble MR. MAINE said,—"Perhaps it will be convenient to the Council that I should follow Mr. Harington, and state the course that I propose to take with reference to those sections for which I am almost solely responsible. As regards the bulk of the Bill, I do not suppose the Council will refuse to refer it to a Committee. The only objection I can conceive is that the revision of the Code is possibly premature. I think that my hon'ble friend has met that objection, and indeed if the revision be premature, it would still be desirable to refer the Code to a Committee, for the great majority of the questions which arise on it are of a kind which can be only settled in Committee, and in settling them, we ought to have as much as possible the benefit of my hon'ble friend's unrivalled knowledge of Indian procedure.

"I pass to those sections on specific performance which are taken from the Bill for the improvement of the administration of Civil Justice in respect of suits of small value. I will say at once that I do not intend to ask the Council to discuss their detail. They have been already modified in passing into the Code, and when we get into Committee, I hope to be able to consent to such further modifications as may suit them to the capacities of the Mofussil Courts, and prevent them causing one atom of practical injustice. And I may say at once that I am ready to accept Mr. Harington's suggestion, and to confine the exercise of those summary powers which I think that Civil Courts should sometimes exert to prevent their procedure from defeating itself, to the case of contracts registered under the Registration Act—an Act of which I said at the time it was passed, and I say now, that it is destined to revolutionize the administration of Civil Justice in India. All, then, I ask the Council to affirm by referring the sections to a Committee is their principle. So much, however, has been said and written, and (I am obliged to add) ignorantly and perversely said and written, about these sections and their intention,. that I am under the necessity of stating to the Council how they originally found their way into my Bill, and how they assumed their original form. And it seems that I must defend one of the most valuable principles known to jurisprudence, the princi-

ple of specific performance, which has been placed in jeopardy by this discussion. It may be recollected by the Council, or by part of it, that on my arrival in this country, the first duty which devolved upon me was the withdrawal of the Penal Contract Bill, which Her Majesty's Government had announced its intention of disallowing I have nothing to recant or recall of what I said upon that occasion. My opinion still is, that those who demanded it did not understand it, and that they did not realise how deadly a weapon they were placing in the hands of any creditor who was actuated by private enmity, and with what perils, under the wide definitions of fraud which the Bill contained, they were surrounding the whole class of debtors, Native and European. But when I asked the Council to allow me to withdraw the Bill, I read all the objections of the Home Government and all the arguments of the opponents of the Bill, as implying an opinion and a pledge that, while a Penal Contract Law was inadmissible, the civil procedure of India, applicable to contracts, had been or ought to be improved up to the highest point to which it was capable of improvement consistently with principle. And indeed, without that admission, I confess for myself that I am utterly unable even to frame an argument against a Penal Contract Law, unless I were to adopt a doctrine, which I hold to be anarchical and anti-social, that deliberate contracts need not be performed. In that spirit, at the close of the debate, the late Viceroy, Lord Elgin, remarked as follows:—

'He had such confidence in the good sense of his countrymen that he was persuaded the European community would agree that it was better, if existing laws could possibly achieve the object in view, first to try their operation; but if beyond those laws, other special legislation was necessary to meet any proved evils, it would be the duty of the Government to endeavour to discover what remedy could be applied. He could not pledge himself that a remedy should be discovered; but he could assuredly say that the Government would not fail from want of a sincere attempt to discover it'.

"As a step to the fulfilment of this pledge, my honourable friend, Mr. Harington, and I obtained an interview with some gentlemen then in Calcutta, who belonged to the class in whose interests the Penal Contract Bill was supposed to be framed. I think I may say, subject to Mr. Harington's correction, that the aim we proposed to ourselves was this—to discover what genuine and *bonâ fide* difficulties they laboured under in civilly enforcing a contract: to point out to them how those difficulties were obviated by the existing civil law: and, if we were ourselves convinced of defects, to consider the best way of removing them. Those sections were the fruit of the interview; and when it is said that their very form shows that they are drawn in the interest of the Planters, it will appear from what I have said that that in a certain sense, and from the necessity of the case, is true. They are a series of short propositions drawn out from

the existing law, and intended to show those who had demanded a Penal Contract Law that the ground for it did not exist, or might be removed without compromising principle. Now, Sir, it would not have been unnatural or surprising if the agitation about the Penal Contract Bill, and the severe scrutiny to which the Civil Procedure Code was consequently subjected, had elicited certain defects in the Code. But in fact I believed at the time, as I said in the Statement of Objects and Reasons appended to my Bill, that the substantial part of the sections was already law without further enactment. Whether I was right or wrong, it is not now material to enquire, as the sections have passed out of my hands into those of my friend and will pass probably into those of the Committee. It is enough to say that I thought so, and that Mr. Harington, the first authority on Indian procedure, thought so too. I have only stated this for the purpose of making the admission that if I had been framing for the first time sections containing new law, they would have been expressed with greater fulness, and would have provided for many contingencies which a lawyer is able to anticipate.

"I now pass to the principle involved in the specific performance of a contract—which I need scarcely say to the Council, is its actual or exact performance—the doing of the very thing promised to be done as opposed to the right to recover damages for the non-performance of that promise. From the plaintiff's point of view, nobody, I suppose, would deny that the specific performance of his contract is what abstractedly he is entitled to, and not the recovery of damages, which, probably, neither he nor the defendant contemplated when the contract was made. Hence, it is practically found that in proportion as a system of law aims at doing perfect justice to all parties, it leans toward specific performance, and takes the stress of its remedies off damages. To take some examples: the English Courts of Common Law which, with many practical excellencies, have, it must be owned, but an imperfect theory of justice, had originally no power of enforcing specific performance, and only lately acquired it by Statute. But the English Court of Chancery, which, with many great and grave defects, has a more perfect set of principles than the Courts of Common Law, has always ordered and still orders specific performance in cases where damages would be an insufficient remedy. (Mr. Maine here quoted a statement of the principle from a judgment of Lord Hardwicke's, and continued). I do not wish to invite the attention of the Council to merely technical points. But I may say that the action of the Court of Chancery in matters analogous to that before us cannot be understood without taking into account its system of injunctions, under which, by ordering a man not to do a particular thing, it virtually tells him what to do. I freely admit, however, that both as regards specific performance and as regards injunctions, the Court of Chancery exhibits

more timidity than would be inferred from the amplitude of the language in which the Judges declare the principle; and doubtless the smallness of the transaction would be a reason for the Court's not interfering. The reason of that I take to be this:—The Court of Chancery, much as it has been reformed, is still a great and complex machine, difficult to be put into motion, and not always certain of operation when it does move. Many of its rules still savour of the doctrine, which does credit to its modesty, that a Chancery suit is a great evil, not to be encouraged, if not to be discouraged. But, when we come to systems of codified law, with a procedure much cheapened and simplified, we find no such hesitation in decreeing specific performance. Accordingly, the French law, which is now the law of the greater part of Europe, will always order specific performance when the defendant is able to perform. And so little difficulty do the Civil Courts make about decreeing it that I myself remember a French Court ordering an eminent author to write a novel, in six volumes. And as there are some persons who appear to think that there is something unpractical about a highly simplified law or procedure, I may as well go on to say that M. Dumas did write the novel. But, unquestionably, the most advanced law on the subject is contained in the Code of Civil Procedure. For as I read the sections 192 and 200 of the Code, the right of an Indian Mofussil Court to decree specific performance is exactly co-extensive with its right to decree damages. So that, as the law stands at present, damages for a breach of contract to marry being unquestionably recoverable in India, a Court of Justice may order a man to marry a particular woman, and may imprison him if he declines. And it illustrates the value of the censures which have been directed against these sections of mine as innovations designed in the interest of the Planters, that when we get into Committee, I shall have to ask my honourable friend to allow the law to be narrowed, and certain classes of contracts to be excluded from the rule.

"I know it will be said that the question in India is not whether an order for specific performance is just to plaintiffs, but whether it is just to defendants. I say that it is just to defendants, and eminently just and eminently kind to poor defendants. See how specific performance operates. In the first place, under the existing Indian Law, the defendant has the same ground of defence in opposing a decree for specific performance as he has in opposing a decree for damages. Next, the Court cannot order specific performance of a contract unless it is satisfied that the defendant in fact is able to perform it. Here is the great safeguard and protection of poor defendants. A decree for damages has this characteristic of a criminal penalty, that it issues unconditionally, and without regard to the circumstances of a poor defendant, who must pay or go to prison. But an order of specific performance is

moulded to the circumstances of the person against whom it issues. I am not afraid to face the question, which is no doubt in the minds of the Council, and to ask what is the effect of a system of specific performance as compared with a system of damages, as between Planter and Ryot. It is this The Planter obtains a decree for damages and executes it. He seizes the Ryot's bullocks, his plough, and his brass pans They are worthless to the Planter; but to the Ryot, if what is said of him be true—if he be a mere *adscriptus glebae*, living from hand to mouth—they must be invaluable; they must be the very means of living. Now what worse could one say of a remedial system than that it inflicts the maximum of injury on the defendant, and confers the minimum of benefit on the plaintiff? Suppose, however, the decree is not executed: it is then hoarded up and kept hanging *in terrorem* over the Ryot. I have no hesitation in saying that a system of perpetually unexecuted decrees is sufficient to keep an open sore eternally running in society. Can such a system be compared with one of redress by specific performance? Is it not infinitely better that the Court should step in, and, when the defendant has shown the first symptoms of intending to commit a breach, order the contract to be performed, at the same time taking away none of his rights of defence?

"Just see what the case is. It is not that of a man who, when he made the contract, did not intend to perform it. That is a punishable offence under the Penal Code. Nor is it the case of a defendant who, from unforeseen circumstances, becomes unable to perform his contract. For it would never be possible for the plaintiff to show the power of such a defendant to perform the contract, and, consequently, no order for specific performance would issue. The case is that of a person who, when he made the contract, did intend to perform it, but, subsequently, changes his mind. Surely, the sooner the Court steps in after the original intention has been formed, and obviates the change of intention, the better it is for the defendant, and certainly the better for the interests of morality. But I should be sorry that the Council should suppose that all I have said is mere theory and speculation. The advantageousness of a system of specific performance to poor defendants I know from personal observation. Look to the English County Courts. They were established, not to supply the defects of the Court of Chancery, which at that time were regarded as incurable, but to supply those of the Courts of Common Law. Consequently, they possess by law no power of awarding specific performance of contracts. But still, insensibly, progressively, against the law, and without fixed intention on the part of the Judges, by the mere force of commiseration for the poor, they have become Courts awarding specific performance The Judges, seeing much of poor men, and, like all who see much of them, contracting a sympathy with their troubles, become unwilling to make uncondi-

tional decrees for payment of damages, and, consequently, for imprisonment. This is what constantly occurs in certain parts of England. An artisan has contracted to execute a piece of work. If it was in Coventry, it would be some lengths of ribbon; if in Nottingham, a pair of shoes. He has broken his contract and is brought into Court Legally the Judge can only condemn him to pay damages and consequently to go to prison. But practically, if he finds that the defendant can still execute the contract, he adjourns the case and gives him time to perform it. In other words, without law, he decrees specific performance. Knowing this, I was not surprised when I learned in Spring what was the plan which the first practical jurist of England, Lord Westbury, had devised for the relief of the poor from the coarse machinery of the County Courts. The Lord Chancellor's Bill was avowedly designed in the interests of poor defendants; and I have seen it asserted that it was thought too favourable for defendants, too unfavourable for plaintiffs, and that it consequently was postponed. Here is the English Bill, and its principle is to lessen the power of these Courts to award damages and, consequently, imprisonment, and to give them all the powers of the Court of Chancery, and amongst them that of awarding specific performance Indeed, making allowance for the difference of procedure in the two countries, and the consequent difference of form in the Bills, it may almost be said that these very sections, which have been condemned in India as devised in the interest of the rich, have been transferred to the English Bill in the interest of the poor. Both Bills are, at all events, founded on a principle which I at least have always contended for as applicable to jurisdiction over the poor, that of taking the stress of judicial remedies from damages, and of freely employing those equitable remedies which can be moulded to the situation of persons and to facts.

"I know, however, what may still be said to me, that this is all very plausible, but that there is a part of India in which unjust contracts are made. Let us assume those contracts to be as unjust as they are alleged to be. Are you going to keep the whole procedure of India in a backward condition, because unjust contracts are made in a corner of Bengal? Even there the probability is that the majority of contracts are perfectly fair. But I maintain that, even as regards unfair contracts, a system of specific performance is better than a system of damages, and that the more scientific instrument will inflict the less deadly wound. I have, however, for myself, no objection to state what further expedient I would employ to solve this ever-recurring contract-difficulty. I would provide Courts and Judges of such capacity that, while on the one hand you arm them with the utmost resources of Civil procedure, on the other they shall be able to recognize and take cognizance of equitable defences in suits for breach of contract, as distin-

guished from legal and formal defences. Our Mofussil Courts are Courts both of law and equity; and, under a proper administration of justice, every contract to which there is a real moral objection should be worthless to the holder. It may be said there is not sufficient judicial material for this in India. But surely if society in a part of Bengal is so exceptionally constituted as to arrest the improvement of your general Civil procedure, the logical inference is that that part of the country should be exceptionally dealt with; that your judicial strength should be concentrated there; and that more than usual facilities should there be provided for scientifically administering the law. Many other nostrums are about, but I have a profound disbelief in all of them. The only remedy which I hold to be sovereign is the application by competent Courts of those tried and tested principles of jurisprudence which alone are capable in matters of contract of mediating between man and man."

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill for consolidating and amending the laws relating to the Procedure of the Courts of Civil Judicature in British India—the Hon'ble Messrs. Harington, Maine, Anderson and Bullen, the Hon'ble Rájá Sáhib Dyál Bahádur, and the Hon'ble Messrs. Taylor, Muir and Cust.

The Council then adjourned.

WHITLEY STOKES,
Offg. Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

CALCUTTA,
The 11th November 1864.

Government Central Press.—No. 43 L. D.—26-8-77.—50.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 18th November 1864.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Honour the Lieutenant-Governor of Bengal.
Major-General the Hon'ble Sir R. Napier, K.C.B.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble H. L. Anderson.
The Hon'ble Claud H. Brown.
The Hon'ble J. N. Bullen.
The Hon'ble Mahárájá Viziarám Gajapati, Ráj Bahádur of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble G. Noble Taylor.
The Hon'ble W. Muir.
The Hon'ble R. N. Cust.
His Highness Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.

His Highness Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan, made a solemn declaration of Allegiance to Her Majesty, and that he would faithfully fulfil the duties of his office.

OATHS OF JUSTICES OF THE PEACE BILL.

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill to substitute certain declarations for the oaths of qualification taken by Justices of the Peace.

ABKARI ACTS EXTENSION BILL.

The Hon'ble Mr. Maine also presented the Report of the Select Committee on the Bill to provide for the extension of Act XXI of 1856 (to consolidate and amend the Law relating to the Abkári Revenue in the Presidency of Fort William in Bengal), to the Provinces under the control of the Lieutenant-Governor of the Panjáb.

NON-REGULATION PROVINCES BILL.

The Hon'ble Mr. Harington, in moving for leave to introduce the Bill to authorize the Governor General of India in Council to extend to the Non-Regulation Provinces under the immediate administration of the Government of India, Acts and Regulations not in force in those Provinces, said that the Bill had grown out of an application made by the Commissioner of Mysore and Coorg for the extension to those territories, by an order of the Executive Government of India, of an Act passed last year by the Government of Madras, to authorize Subordinate Magistrates of the second class to take cognizance of offences falling under Section 174 of the Indian Penal Code.

The more recent enactments of this Council, which had been passed for particular places or parts of India, but which it was considered might from their nature be extended, at some future period, with advantage to places other than those in which they were intended immediately to take effect generally, contained a provision authorizing such extension. Where this provision existed in the Act, all that was necessary for its extension was an order of the Executive or Local Government; where this provision did not exist, the Act could be extended within territories in British India only with the special sanction of the Legislature. The Act of the Madras Government, which the Government of India had been asked to extend, was within the latter category. The extension of the Madras Act to Mysore and Coorg would probably be very beneficial; but instead of confining legislation at the present time to the extension of this single Act in the manner proposed, it appeared to be a better and more convenient course that a general Bill should be introduced, authorizing the Governor General in Council to extend to the Non-Regulation Provinces under the immediate administration of the Government of India, Acts and Regulations not in force in those Provinces. This was the object of the Bill which he had asked for leave to introduce. The Bill would be limited in its application to Regulations and Acts existing at the time of the passing of the Bill. He did not think that any objection could be made to the principle of the Bill.

The Motion was put and agreed to.

HIGH COURTS' CRIMINAL JURISDICTION BILL.

The Hon'ble Mr. Maine, in introducing the Bill to amend the Procedure of Her Majesty's High Courts of Judicature in the exercise of their Original Criminal Jurisdiction (relating to Grand Juries), said—" Although there are some obvious reasons for postponing this Bill, I have preferred to go on with it, because I think I can prove to the Council that in some shape or other, whether modified or not in consequence of any representations we may receive, a Bill on the subject of Grand Juries must be passed. The reason that I give is, that the question has been settled for us by the British Parliament. The Letters Patent of the High Court, issued by the Queen in Council under the authority of the High Courts Act, and therefore having the force of statute law, make provision for the deputation of a Judge into the Mofussil under commission from the Governor General in Council. The circuits of the Judges are an integral part of the machinery of the High Courts; and I apprehend that your Excellency will fail in duty to the Queen and to Parliament if you do not establish them as soon as the Court has completed its first duty to its suitors, by clearing off its arrears. What, then, is our position? If we send a Judge of the High Court to Patna or to Dacca, or any other large Mofussil city, what number of gentlemen capable of serving on a Jury shall we find there? My own information, which doubtless the Lieutenant-Governor can correct, leads me to believe that even if we reduce the Grand and Petty Juries to the lowest point, we should not find a sufficient number of competent persons to make them up, unless we carried the inherent absurdities (I shall justify that word presently) of the Grand Jury system to the furthest point by taking the Grand and Petty Jurymen from the same list, so that the same man will be first tried secretly under every conceivable disadvantage, and will then be tried publicly and with every advantage, by the same men.

But even those who maintain that it is possible to preserve the Grand Jury in the Mofussil, allow that both it and the Petty Jury must be reduced greatly in number, and that most of the exemptions must be repealed. Hence, by general concurrence, it is clear that some legislation is necessary. I therefore propose to the Council to commit the Bill, remembering that it has still to go through several stages in which it can be modified, if any alteration should be thought necessary. Meantime I shall have the opportunity of stating the real case against Grand Juries in India, which I confess I omitted to do in the Statement of Objects and Reasons appended to the Bill. The truth is, I took for granted that in comparatively small and very busy societies, a system which occupied the best heads of a community with an inquiry conducted under such disadvantages as to defeat itself, and confided the momentous business of trying men for their lives to the residue, was self-condemned. But one of the things one learns in India is to take nothing for granted; and I will now attempt to say what Grand Juries really are, both in England and in India.

In the absence of any formal expression of opinion, I have only the presentments of the Grand Juries of two of the Presidency Towns. I may say, however, that the papers which have already been sent in show that a large majority of the Barrister Judges of the High Courts are in favour of the Bill.

I have heard something of a presentment by the Grand Jury of Bombay. But, as I have not actually seen it, I will not say anything about it. I am, however, able to say, on the authority of my Hon'ble friend Mr. Anderson, that the Bill has been received with favour by all classes of the Bombay community. Here, however, is the presentment of the Grand Jury of Madras :—

"The Grand Jury, taking advantage of the opportunity afforded them by the reference made by your Lordship in your charge on the opening of the present Sessions to the Bill about to be introduced into the Legislative Council of India for the abolition of Grand Juries, are desirous, before they separate, of placing on record the opinion entertained in regard to the proposed measure by the great majority of those who have served on the present occasion.

"The Statement of Objects and Reasons by the Hon'ble Mr. Maine, accompanying the Bill, has been carefully considered by them, and, in their opinion, establishes a complete case for the abolition of Grand Juries in this country. In making this statement, however, I do not wish to be understood as expressing an opinion that the institution has not rendered good service in the administration of justice in India, for it is, on the contrary, their firm belief that with all its inherent defects it has been productive of much good.

"The Grand Jury entirely concur in the view expressed by your Lordship of the many important advantages resulting from the association of European gentlemen of education and business-experience with Natives of rank and position, and not one of the least improvements contemplated by the proposed Bill appears to them to be, that the services of the gentlemen now on the panel of the Grand Jury will, should it become law, be made available in the trial of cases in open Court.

"That the proposed change by thus increasing and strengthening the panel of the Petty Jury, will materially tend to facilitate the administration of justice, the Grand Jury entertain no doubt whatever."

And here is the presentment of the Grand Jury of Calcutta, which certainly differs considerably from that of the Grand Jury of Madras :—

"The Grand Jury beg leave to present that they have learned with extreme regret, as well from your Lordship's charge as the Public Journals, that a Bill, having for its object the abolition in India of the institution of the Grand Jury, has been introduced by Mr. Maine, and obtained the sanction of the Government, and is therefore likely to become law. The Grand Jury cannot separate without giving an emphatic expression of their unanimous opinion that such an interference with a time-honoured institution is premature and unwarranted. Whatever may be the case in England, where the institution in question is still maintained in all its integrity, the time, in the opinion of the Grand Jury, has certainly not yet come when in India the Grand Jury is no longer, to use your own words, 'a necessity for the purpose of guarding the subjects from oppression on the part of the Executive Government, to protect the individual from the aggressive conduct of men in power, whose purposes would be sufficiently met by the fact of the obnoxious person being placed on trial in open Court on a Criminal charge.' The Grand Jury think that this has been sufficiently demonstrated by actual cases of no remote occurrence; nor is there any guarantee that here in India we may not again be placed in such times (to quote once more from your Lordship's charge) 'of great public commotion and excitement, when it may be necessary for the Executive to use extraordinary and indeed despotic powers against the liberty of the subject, under circumstances which would imply that the Magistrates ought not to be trusted unchecked in the exercise of arbitrary power.' The Grand Jury are further of opinion that the object of the presentment of a former Grand Jury has been sufficiently, and to all intents and purposes, met by the extension of the summary jurisdiction of the Police Magistrates. And believing, as they do, that the measure in question, if carried into effect, would be

fraught with danger to the liberty of the subject, they beg most respectfully to present that in their judgment, the Bill ought not to be passed into law."

Now, Sir, I trust that the highly respectable gentlemen who signed this presentment will not be offended if I say that its value is rather rhetorical than logical. I do not wish to criticise what is evidently more an expression of feeling than anything else. But there are some matters which I cannot help observing in it. There are some things in it which I cannot understand. In the first place, I do not think that the Grand Jury rightly understood the learned Judge, when he told them that their functions prevented Government from putting obnoxious persons on their trial, or rather they imagined him to be giving a more minute exposition of the law than he intended. For, Sir, it does happen that the Government already possesses this terrible power of gaining its wicked ends by sending men to be tried at once by the Petty Jury. Under an English Statute, which this Council cannot repeal, the Government has the power of filing, through the Advocate General, what are called informations *ex officio*, in every case in which it may choose to consider (to use the word of a legal authority) that "an enormous misdemeanor affecting the common wealth or public peace" has been committed. Assuming, therefore, that you Excellency's Government were capable of so insane an act, there is nothing to prevent you from putting all the printers of the newspapers in Calcutta on their trial for seditious libel, even though you knew them to be innocent, and the Grand Jury could not save them. Again, I am unable to reconcile the argument of the Grand Jury that the greatest of all calamities is to be charged with an offence, without reference to ultimate acquittal, and the argument in which both this and the former Jury seemed to coincide, that a large addition should be made to the summary jurisdiction of the Magistrates. For if the disgrace consists in the mere accusation without reference to the final establishment of innocence, surely it is as easy to disgrace a man by charging him before a Magistrate with a crime which is punishable with hard labour and a flogging, as by charging him with a crime which is punishable with penal servitude or death. Of course it is a matter of taste, but if I were in the predicament of having a false charge brought against me by men in power, though I knew I should be acquitted of it, and had my choice of the accusation, I confess I should prefer treason to larceny. But the question which I should really like to ask these gentlemen who signed the presentment—some of them well-known members of the mercantile community of Calcutta—is whether they are not satisfied to dispense with the enquiry before the Grand Jury in cases in which they are greatly more interested than in criminal charges. If a merchant of Calcutta were in danger of being involved by a malignant enemy in a disagreeable trial, I venture to ask my hon'ble friends at the other end of the table whether it would be more likely to be a civil or a criminal trial? I fancy I have observed that the number of personal cases—cases in which questions of commercial honour and probity are involved—coming before the Civil Courts of Calcutta, is larger than comes before any jurisdiction of similar extent at home. It seems to me that the risk of being subjected by an unscrupulous private enemy to what I may call

a civil charge is, in Calcutta, at least appreciable. In the trial of such a charge, a man's good name and mercantile credit, his present fortune, and future prospects may be at stake—in such a case do you demand a trial by Grand Jury? No, you do not even ask for a common Jury. You are satisfied with the fiat of a single Judge, and it seems to me that the verdict of this one man is more respected here, than the award of a Jury would be at home.

But, Sir, of course the only complete answer to the presentment of the Calcutta Grand Jury will consist in showing what a Grand Jury is, not only in England, but in India. Every body, I suppose, is aware that the Grand Jury was originally a body which more nearly resembled an assembly of witnesses than what we should now call a Jury. It consisted of the principal freeholders of the county, summoned by the sheriff and empowered to declare all matters known to itself and affecting the public comfort or peace. The most characteristic relic of its ancient condition is its power to make presentments of nuisances, in order that they may be abated. Now, considering that Calcutta probably contains more choice samples of every nuisance known to the law than any city inhabited by Europeans, if I had found that the Grand Jury of Calcutta had exhibited the same activity which I am told the Grand Jury at Bombay has shown, and had been extraordinarily watchful and vigilant on the presentment of its nuisances, I should have said that, whatever were its anomalies, there was an argument for preserving it. But the Calcutta Grand Jury has this singularity, that it has grown more inactive in proportion as the city has grown worse. About 1818 it seems to have been in the habit of making presentments on those matters which have lately attracted public attention. But of late years it has made none. I have here an abstract list of presentments—there are a good many about 1857 and 1859—there are some to the effect that the "arm of justice has been paralysed"—nothing relating to the general health of the city.

I presume, therefore, I can leave out of account the services of the Grand Jury as a custodian of public health, and pass to its function as a judicial body. What, then, is a Grand Jury considered from a judicial point of view? Not, I mean, a Calcutta Grand Jury solely, but a Grand Jury in England, or in any part of the British dominions. First of all, it is a body of men so numerous, that under almost any conceivable conditions, it would be unfitted calmly to sift evidence. For it consists ordinarily of twenty-three persons; and that comes dangerously near the point at which the instincts of a crowd take the place of deliberation.

Then after having so constituted it, you proceed to deprive it of all the aids which modern jurisprudence considers essential to the discovery of truth. You deprive it of the wholesome check of publicity; for since the Star Chamber was abolished, it is the only secret tribunal known to English institutions. Next, you take away the rule of unanimity, which, though no doubt objectionable in its application to small juries, such as those of our Code of Criminal Procedure, is, in its application to large juries, a valuable curb on the tyranny of the majority. You take away that sustained guidance of the Judge without which even real trial by Jury—that is, trial by Petty Jury—would be absurd. You

take away all chance of its applying the rules of evidence by the perpetual exemption of practising lawyers; and then, as if you had not done enough for it, you remove the means of cross-examining the witnesses by comparing the statements which they have made at different times, for the Grand Jury does not see the depositions. And after all is done, you reduce its functions (and in this, perhaps, you act consistently) to a simple guess at a probability, for it only hears one side of the case. Well, Sir, since Grand Juries are so constituted, and since such are their functions, I have always thought, even in England, that though it includes all the persons in the community who are best able to form a judgment upon evidence, and though in most cases I doubt not that it uses its powers conscientiously, nevertheless, its inherent disadvantages are such, that a Grand Jury is an obstruction to justice; and therefore I entirely agree with that Metropolitan Grand Jury which has for a series of years presented itself as a nuisance. But I must admit that in England, although Criminal Juries are notoriously inferior to Civil Juries, yet the field from which the two lists of Juries are taken is so large that the system is perhaps tolerable. But how does it work in India? Well, if I never left my own house and my own room, I should be able to say how it worked; for it happens that no complaints come so frequently before Members of Government as complaints of clerks in our Public Offices of the extreme frequency with which they are called to serve on Petty Juries, and of the annoyance to themselves and hindrance to public business caused by the interruption. I mention this because it shows the unfairness with which the burden and heat of assisting in the administration of criminal justice are thrown upon one class under the present system, and also because it illustrates the value of the argument that Grand Juries should be retained as a protection against the machinations of a too powerful Government. We are told that Grand Juries must be preserved lest we should make tools of the covenanted servants on the Bench; and the effect is to send men to be tried for their lives by Juries largely composed of the uncovenanted servants in our offices. Of course I know that those gentlemen give honest, independent verdicts. But surely, if your Excellency's Government were capable of the iniquity imputed to it by the Calcutta Grand Jury, it stands to reason that it had better begin with those officers who, so to speak, are under its eye and under its hand.

My case, however, rests on those opinions of Mr. Ritchie's which have been circulated through the Council. I am, myself, open to the remark that I have not seen the practical working of the system in India. But here is Mr. Ritchie giving the result of an experience of twenty years. I never saw Mr. Ritchie. But there is such an unanimity of testimony about him, that I cannot doubt that he was a man of remarkable moderation, fairness and judgment. He was the incontestable leader of the Calcutta Bar, and he wrote these papers while still in a situation—that of Advocate General—which, while it enabled him to see those cases from the point of view of the Government, did not cut him off from sympathy with the opinions of the unofficial community. Here is the net result of his observations. After reciting a list of miscarriages of justice

lamentable to read, caused sometimes by the Petty Jury and sometimes by the Grand, but, as he admits, and I readily allow, attributable not to the persons, but to the system—in the case of the Grand Jury, to the disadvantages under which it is placed, in the case of the Petty Jury, to the withdrawal from it of those best able to assist it to a conclusion—he deduces from this the inference, which he presses repeatedly on the Government, that Grand Juries ought to be abolished, and Grand and Petty Jurors fused. I will read the passages of which the words are nearly identical with those of Sir Colley Scotland to the Grand Jury of Madras.

"The result of a pretty long observation of the practical working of the Grand Jury in this country is, that the constitution of this tribunal appears to me wholly unadapted to the wants and circumstances even of the European portion of the community; that it is unable to afford any safeguard to the innocent, while it often unconsciously serves as an obstruction to the due course of justice, and that the only purpose for which it can now be considered as of any real use—that of imposing some check upon private prosecutions—may be much better attained in a different way

"I would therefore respectfully urge upon the Government the expediency of taking steps towards the abolition of this body, and the substitution of such proceedings as I have above pointed out. Such substitution is quite within the competency of the Legislative Council, to whose attention, I think, the subject may be submitted with advantage, without waiting to mature more extensive changes in the Criminal Law Procedure applicable to British subjects.

"I am sure that, in the strictures above made, I shall be understood to refer to the defective character of the institution, and not to the class or individuals comprising it. For that class and for many of the individual members of it I have a very high respect. And one great improvement in Jury trials in this country, which I anticipate from the change I advocate, is that those gentlemen will be thereby released from duties which are practically useless, and that their services may be employed in the far more important functions of Jurymen at the trial From an union of the class of Grand Jurymen with those now called Petty Jurymen, whereby the high intelligence, position, and independence of the former will be brought to bear upon criminal trials in the Supreme Courts, I think very valuable results may be expected. The actual loss of time to those gentlemen need not probably be greater than it is at present, as the proportion summoned upon each Jury need not be large. And it may be reasonably hoped that the time thus taken up, even if longer than at present, will be cheerfully bestowed, as the class from whom it will be required are those most interested in preserving Jury trials in this country, and, consequently, in raising the character of Juries If this change be effected, the service upon Juries will be looked on by the public with more respect, and the verdicts of Juries will command more general confidence than at present."

Those, then, are Mr. Ritchie's views. His opinion and his facts coincide so exactly with those which I could have predicted *à priori*, that I have not the slightest doubt of the correctness of either the one or the other.

I have now to address myself to the arguments which I have heard or read for maintaining the Grand Jury. It is said that the Grand Jury is a protection to an innocent man falsely accused, especially when he is the victim of unscrupulous enmity, whether that of a private adversary, or of men in

power, or of the Magistrate. I do not deny that the Grand Jury may sometimes release an innocent man, for if you let a man off, it is always possible that he may be innocent. But I say that the case in which it will most rarely occur will be that of an innocent man oppressed by an enemy. To assume that the Grand Jury can protect you from the false accusation of an enemy, is to assume not only that your enemy is unscrupulous, but that he is a fool; for, Sir, anybody can get up a colourable *primâ facie* case—at least I hope we may claim that credit for the Government—and before a fair-looking *primâ facie* case, if the Grand Jurors obey their oaths, the Grand Jury is helpless. Does it not strike the Council that the most dangerous charges are those which are *primâ facie* impregnable? Suppose that some unlucky combination of events, or, what I am afraid is far from impossible in this country, some artful conspiracy, involved an innocent man in a criminal accusation; surely the chances are that the case on the face of it will be perfect, the witnesses will have concocted their story, and all the documents bear the stamp of authenticity. In such an event the vindication of innocence will depend exactly on those instrumentalities which the Grand Jury never has at its command—on the cross-examination of the witnesses as to facts known only to the accused, and therefore unknown to the Grand Jury; on the strength of the case for the defence which the Grand Jury never hears, and on the balancing of fact against fact by the Judge whom the Grand Jury, though an important part of the enquiry, never see. The truth is, that innocent men unjustly accused must place reliance entirely on the Petty Jury and not on the Grand, and the direct effect of the system is to starve and weaken the Petty Jury. In truth unless it could be accounted for historically, the system would be one of the most unintelligible that ever existed. It is strong at the wrong point, and weak at the wrong point; and, if it were worth while reforming it, the only sensible way of doing so would be to turn it upside down, and give the functions of the Petty Jury to the Grand Jury and those of the Grand Jury to the Petty.

I see it further said that many of the Magistrates are incompetent and prejudiced, and make bad commitments. Now, Sir, it is one of the most characteristic results of the Grand Jury system that it exactly prevents our knowing the facts which are here alleged. Whether the commitments of the Magistrates in India are generally bad, or whether any of them are bad, are entirely matters of opinion and conjecture. The cases are disposed of in the darkness of the Grand Jury room. Of course, the Grand Jury says that it is right, and occasionally makes emphatic presentments that it is right. But that does not prevent another large class from asserting with equal positiveness that the Grand Jury was entirely wrong. The public is not let into the secret, and who is to decide? I can only say that my own enquiries have elicited nothing better than positive contradictory assertions. And there is great evil in this. It is the duty of the Local Government to watch for evidence of incompetence or prejudice among the judicial Officers, and, if necessary, to rebuke or remove them. Now a trial in the High Court throws such a flood of light on all

concerned in it that it is greatly to be regretted that this system deprives the Local Government of most valuable facilities for forming a judgment on the real standard of capâcity among its judicial servants. Here, too, are some remarks of Mr. Ritchie's on another of the fruits of this secrecy:

"Not the least evil attending this state of things is the utter uncertainty as to what has taken place before the Grand Jury, and the suspicion to which both they and the witnesses are exposed. Whether the witnesses have kept back the truth; whether they have boldly sworn to the contrary of what they deposed to before the Magistrate; whether the Grand Jury have been in a hurry to get away, and have not had the patience thoroughly to investigate the case; whether they have mistaken the nature of their duties, and thought they were bound to ignore a Bill unless they were prepared conclusively to convict, or whether they were carried away by prejudice or sympathies, no human means can detect, and the law does not permit us to enquire. And yet any one of these alternatives may be the true one; and the Grand Jury and the witnesses are thus placed in the unfair position of being open to a suspicion which may be as unfounded regarding the one as regarding the other, but which is of itself disastrous to the administration of justice."

So far as I myself can form an opinion on a matter about which I confess that all is dark, I am inclined to think that the presumption is against the Grand Jury: in fact the very secrecy itself is a ground for such presumption. The commitments to the High Courts in the Presidency towns are practically made either by trained lawyers or by men whose every-day business it is to sift evidence. As regards them I should be disposed to apply the maxim *cuique in arte suâ credendum;* and if the Grand Jury differs from them, to say that the chances are that the Magistrate is right and the Grand Jury wrong. As to the Mofussil Magistrates, I cannot forget that Mr. Justice Peterson, in Spring went even out of his way to compliment the Bengal Magistrates on the way they prepared their commitments; and the Chief Justice of Madras, in his charge to the Grand Jury, declares himself satisfied with the Mofussil commitments in that Presidency.

However, Sir, to obviate the least chance of injury being done by arraigning a man against whom not even a *primâ facie* case has been established, I am willing to consider in Committee a plan which, I have reason to believe, commends itself to several of the Judges of the High Court. If the Judge, on reading the depositions, thinks that no *primâ facie* case is disclosed, I do not object to giving him power to examine the witnesses in an informal manner, and then, if upon the depositions and the evidence he thinks a conviction impossible, to prevent the accused from being arraigned, and order his discharge. That, after all, is pretty much what he does now; for, though the Grand Jurors are on oath, I suppose it is no great secret that, in ninety-nine cases out of a hundred, the bills which they ignore are those on which the Judge has thrown a doubt in his charge. I do not, however, wish this to be quite a hole and corner proceeding; and, therefore, when a Judge releases a prisoner, I would place the Judge under an obligation to report the case to Government, and state his reasons for the course he has taken.

But, Sir, unless arguments are presented to me which have not yet occurred to my mind, further than that I cannot go, speaking for myself as an individual Member of the Government. Though this is in itself a little question, a great question is plainly implicated with it. All of us occasionally see complaints from the European community that in public matters their existence and importance are not sufficiently recognized. But I think the Government may call upon that community to recognize the facts which are implied in its existence. Its existence, its importance, and its growing power are all facts: it is a fact that whole provinces, such as Assam, Cachar and Sylhet, are getting to belong to it in the same sense that Australia belongs to the Australians. But there are facts on the other side. With this great multiplication of Europeans, there has come, as unfortunately there always does come, a great increase of European crime. How is it to be dealt with, for dealt with it must be, not only in the interests of justice, not only in those of the Native population, not only in those of the European settlers themselves, who, as I said in the Statement of Objects and Reasons, suffer more severely from it than any body else, but also, I could almost say, in the interests of the criminals themselves. For we all know our countrymen well enough to be aware that, after bearing for a long time with the annoyance caused by unpunished crime, out of respect to some venerable institution, or venerable quirk, they suddenly turn round and call, almost ferociously, for punishment. How, then, is this mass of crime, relatively, if not absolutely, great, and committed over much of India with the most perfect impunity, to be disposed of? For myself, while I think that the Government of India will not have done its duty until every European criminal is brought to justice as certainly as if he were a Native, I am opposed (to use a phrase which I dislike, and which, I think, reflects no credit on those who invented it), to a Black Act. I think that, for so long a time as we can look forward to, European British subjects will have to be tried for all serious crimes by special tribunals—that is, by a Judge applying those strict criteria of truth which constitute the English law of evidence, and a Jury—a real Jury—a Petty Jury. To put that on its lowest ground, it seems to me that trial by Jury, that is trial by the Petty Jury, has affected English character more than any national institution, even more, I am inclined to say, than representative institutions. While, then, we preserve and protect so many Native customs that we cannot even justify, I regard it as only reasonable to respect the greatest and most influential of English usages. The exemption, therefore, of British subjects from the ordinary criminal tribunals seems to me to stand on precisely the same ground as the exemption of Hindus and Muhammadans from the new Civil Code which is about to be introduced. But of course I have more positive grounds for my opinion. I considered that these Special Courts, scattered or moving about the country, will be of the utmost importance as examples and patterns. They will exhibit the English law where it is strongest, and serve to correct the Mofussil Courts where they are said to be weakest, namely, in the sifting of evidence and the ascertaining of facts. But if Europeans are to enjoy this privilege (I don't use the word in an invidious sense), they must expect to enjoy it in a reasonable way: and I think that the first and best evidence of reasonableness will consist

in their consenting to give up the Grand Jury. For my own part, believing as I do, that the greatest contribution of English Lawyers to the art of practical justice—perhaps their only very great contribution—is the discovery of the process of ascertaining facts by Judge and Jury through the agency of the rules of evidence, and believing that the spectacle of the process in operation will be of the utmost value in India, it is matter of every-day regret to me that its impressiveness and authority should be spoiled by this absurd appendage of an institution which, in all but the integrity of those who take part in it, exhibits the worst characteristics of Oriental procedure—which is secret and one-sided, and unscientific and irresponsible, and which, besides, sucks all the life-blood out of the invaluable institution on which it hangs.

I have only one thing more to say. I have no right to assume that any part of the feeling against this Bill has been caused by the belief that I wished for a simple fusion of the Grand and Petty Jury lists. The formation of those lists is a matter which I thought it would be more respectful to leave to the High Courts, as they now possess it by Act of Parliament. But I wish to say that, in my opinion, there should be no such fusion; and I have no objection expressly to introduce into the Bill a power to that effect. I believe it is practically found that men deliberate better together when they belong to the same average station in life. I would therefore follow the practice adopted with respect to Civil Juries at home, and have both a special and a common Jury list for criminal cases. The special list would contain the majority of the present Grand Jurors, and Juries would be taken from it in all cases of great importance, or which the High Court should deem to be of pecular difficulty. The Grand Jurors will then do little more work than they do at present, and do it much more effectually. And if it should enter into your Excellency's head, or rather that of my hon'ble friend the Lieutenant-Governor—for I believe that it is he who here represents an aggressive despotism—to put on his trial an innocent man who is a public or private adversary, I venture to think that, if the trial is held by a Judge of the High Court and a Jury from this list, my hon'ble friend will be extremely disappointed.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to amend the Procedure of Her Majesty's High Courts of Judicature in the exercise of their Original Criminal jurisdiction (relating to Grand Juries)—His Honour the Lieutenant Governor of Bengal, and the Hon'ble Messrs. Harington, Maine, Anderson, Brown, Bullen, and Cust.

The Council then adjourned.

WHITLEY STOKES,
Offg. Asst. Secy. to the Govt. of India,
Home Department (Legislative).

CALCUTTA,
The 18th November 1864.

Govt. of India Central Printing Office.—No. 188 L. D.—30-7-64.—70.

Abstract of the Proceedings of the Council of the Governor General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 25th November 1864.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Honour the Lieutenant Governor of Bengal.
Major General the Hon'ble Sir R. Napier, K.C.B.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble Sir C. E. Trevelyan, K. C. B.
The Hon'ble W. Grey.
The Hon'ble H. L. Anderson.
The Hon'ble Claud H. Brown.
The Hon'ble J. N. Bullen.
The Hon'ble Mahárájá Vijayaráma Gajapati, Ráj Bahádur of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble G. Noble Taylor.
The Hon'ble W. Muir.
The Hon'ble R. N. Cust.
The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.

OATHS OF JUSTICES OF THE PEACE BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill to substitute certain declarations for the oaths of qualification taken by Justices of the Peace be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

ÁBKÁRÍ ACTS EXTENSION BILL.

The Hon'ble MR MAINE also moved that the Report of the Select Committee on the Bill to provide for the extension of Act XXI of 1856 (to consolidate

and amend the Law relating to the Ábkárí Revenue in the Presidency of Fort William in Bengal) to the Provinces under the control of the Lieutenant Governor of the Panjáb, be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill be passed.

The Motion was put and agreed to.

CIVIL AND CRIMINAL COURT (PANJÁB) BILL.

The Hon'ble MR. CUST, in moving for leave to introduce a Bill for altering the constitution and enlarging the jurisdiction of the Chief Court of Civil and Criminal jurisdiction in the Provinces under the Government of the Lieutenant Governor of the Panjáb and its dependencies, remarked that the Panjáb was a Non-Regulation Province, and that the final Court of Appeal, Reference and Revision was presided over by a single Officer called the Judicial Commissioner: that owing to the annually increasing amount of business, it had been found that one Officer could not satisfactorily discharge the duties of the Court, and moreover that to constitute an effective Court of final jurisdiction, there was a necessity for more than one Judge: this had been strongly represented by the Local Government. The time was not come yet for establishing a High Court of Judicature, but the measure now proposed was in that direction, *viz.*, to appoint two or more additional Judges to form a Court to be called the Chief Court of Judicature of the Panjáb.

For the present one additional Judge only would be appointed, and he would be a Barrister, with the same qualifications that were required from a Judge of the High Court. The Court thus constituted would dispose of all the appellate business according to rules framed by themselves and sanctioned by the Local Government.

But the Court would have an Original, as well as Appellate, jurisdiction: on the Civil Side the Court would be able to call for and transfer to its own file for decision any case pending in any subordinate Court; in fact, it would be vested with the same powers which were possessed by the High Court in its extraordinary Civil jurisdiction. Such cases would generally be those of peculiar importance, and specially those where a knowledge of English law was necessary.

The Court would also in its Original Criminal jurisdiction try offences committed by European British subjects, which at present are triable by the High Court of Calcutta only. The attention of the Council was called particularly to this part of the scheme. Owing to the great distance of the Panjáb from Calcutta, the inconvenience and expense of sending parties charged with offences

and all the witnesses was very considerable. The number of European British subjects was annually increasing, and the increase of European crime was considerable: in fact in a certain class of offences there was a complete impunity to the European British subject. Under this Bill such trials would be held by the Barrister Judge with the aid of a Jury. The details of the procedure would be settled in Committee.

The Motion was put and agreed to.

INDIAN CIVIL CODE, CHAPTER I.

The Hon'ble Mr. Maine introduced the Indian Civil Code, Chapter I, and moved that it be referred to a Select Committee. He said that though it was difficult to over-rate the importance of the measure, he proposed to introduce it with very few observations. Probably the Council would think it due to the eminent names appended to the Report to refer the Bill at once to the Committee. Moreover, he thought that he could not usefully add anything to the analysis of their work which the Commissioners themselves had furnished, and in his Statement of Objects and Reasons he had said everything which he had to state as to the probable effect of this Code on certain races and classes. He only wished to suggest for the consideration of the Council the course which it seemed to him most expedient to follow. The Council might have observed that, in his Statement of Objects and Reasons, he had expressed himself doubtfully as to the applicability of the Code to certain wild tribes who did not fall within the exception of Hindús and Muhammadans—such, for example, as the Bhíls, the Khonds, and the Kóls, whose gradual civilization had lately been attracting notice both at home and in India, the Buddhist tribes spread along the crest of the Himálaya, such as the Thibetans in the valley of Spiti and the Lepchas about Darjíling. He believed it was found that in proportion to the barbarism of a tribe was the faintness of the notion of individual right as distinguished from family right. Thus, while the rights of one household against another might be clearly ascertained, the rights of the members of each household *inter se* would probably be faintly and vaguely defined. When, then, all that you knew of a particular race was that it was barbarous, the presumption was, as he had said in the Statement of Objects and Reasons, that a system of conjoint family-enjoyment during life was combined with a system of conjoint family-succession after death. It was accordingly difficult to say what might be the effect produced by a law of succession like that of the Code on a set of barbarous customs. A violent disturbance of them might be effected by the very sharpness and precision with which the rights were declared. Being aware of this danger, the Government requested the Officers in charge of these tribes carefully to consider the effect which the first Chapter of the Code would have on their customary law. Little information of the kind had, however, come in, and that was not surprising. For it was by no means easy to ascertain the detail of

a body of barbarian custom: when ascertained, it was harder still to state it in intelligible language; and more difficult still to define what would be the effect upon it of a civilized body of law. MR. MAINE was afraid that if they waited for all the information they required, the enactment of that part of the Code would be inordinately delayed. He therefore proposed that if the Council was satisfied of the wholesome operation of the new law upon the more civilized races to whom, as it stood, it applied, it should be enacted with a Section empowering the Governor General in Council to exempt from its operation any race, sect, or tribe; and, moreover, to exempt them retrospectively from the moment of the passing of the Bill, so that there might be no inconvenient interruption in the devolution of rights. He trusted that under this power it would not be necessary to exempt a race so numerous as the Burmese. Turning to the more civilized races, the first place among them was of course taken by the Europeans. He was happy to say that all the information he had received led him to believe that this part of the Code would be received by them with favour. Outside the Presidency towns, it would be heartily welcomed; and, indeed, no one could contemplate the utter doubtfulness and uncertainty of the European law of property in the Mofussil without feeling that a much worse set of provisions than this would be the greatest of boons.

He would advert to one or two criticisms—he could hardly call them objections—which had reached him as to this Chapter of the Code considered as a modification of English law. He had received a printed paper which had possibly been sent to other Members of Council. The writer professed to be a Scotchman, and to speak the feelings of a number of Scotch gentlemen who were settled in India. He was warmly in favour of this part of the Code, and wished that it should become law with the least possible delay, but expressed a fear that it might compromise a principle which he and his countrymen prized on moral and social grounds; the principle of legitimation *per subsequens matrimonium*, that is, the principle by which under Scottish Law natural children were legitimated by the after-marriage of their parents. The objection, MR. MAINE thought, was founded on a misconception. It was true that the Code declared that none but legitimate children should succeed; but it no where as yet defined legitimacy. Whatever, therefore, were at the present moment the law of India determining the legitimacy of a Scotchman's children, a question upon which MR. MAINE would be sorry to offer a very positive opinion, it would be wholly unaffected by the enactment of this part of the Code. Doubtless the question—and it was a most difficult one—would have to be decided hereafter whenever the Chapter on the Law of Persons came before them for consideration. But it was probable that that Chapter would be the last taken up by the English Law-Commissioners.

Another remark had been addressed to MR. MAINE on Section 4, which declared that "No person shall by marriage acquire any interest in the property of

the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property, which he or she could have done if unmarried." A doubt had been hinted whether, on moral grounds, the complete proprietary independence of husband and wife was justifiable. But in this Section, marriage meant the mere fact of marriage, and the provisions of any will or marriage-settlement were unaffected by it. It was true that in England under the Common Law, the fact of marriage conferred on a husband certain rights over his wife's Realty, and the whole of her Personalty, past and present. But the operation of the rule was much controlled by certain doctrines of the Court of Chancery, compelling a husband to settle property devolving on his wife, when it happened to be only recoverable through the agency of the Court; and, as regards the property-holding classes, the practical effect of marriage-settlements and wills was to render the rule of very limited application. MR. MAINE imagined that an English father would consider it a great calamity that his daughter should marry without a settlement. Either, therefore, that settlement or some will controlled the enjoyment of the property, and it was only through accident that the naked rule of law was allowed to operate.

Similar considerations carried with them the answer to another criticism which had reached him. This law of succession practically turned Realty into Personalty, and provided that the same rules of succession should govern both. He had been asked whether the extreme subdivision of land which a similar law of succession was supposed to draw with it in France, was, on economical grounds, desirable, either for India or for any other country. Here also was apparently a misconception arising from not taking into account marriage-settlements and wills. The reason why the *morcellement*, as it was called, of land in France had gone so far was, not because the French law of intestate succession divided the land equally among all the children, but because the French Code contained a number of most stringent prohibitions against private interference with that law. It might be said that the French Code compelled a man to die intestate, since, if he left children, any will which he might make could have only the most limited operation. It was, indeed, notorious that if those restrictions had not existed, a very large part of the soil of France, on the return of the French Nobility in 1814 and 1815, would have been tied up in entails nearly as strict as those which existed previous to the Revolution, even though the law of succession to an intestate was precisely the same as that of the proposed Indian Code. It was further a fact that, in some European countries into which the French Code had been introduced, but in which these prohibitions had been relaxed in favour of certain classes, the existing settlements and entails were even more stringent than those usually found in England, there often not being even a power of portioning daughters. The truth was that, when you were dealing with educated and property-holding societies, the question of the legal consequences which were to follow from the mer-

facts of marriage and of death had chiefly a technical importance; and he had no doubt that technical considerations had mainly influenced the Commissioners in framing these provisions. It was quite certain that, when you had once enacted that marriage should not *per se* confer any rights on husband or wife, and that the law of succession to land should be the same as the law of succession to Personalty, you at one stroke introduced an amount of simplicity into English law which was almost incredible.

The only serious difficulty which would have to be encountered in Committee arose through the proposed application of the Code to the Pársís. The Council might be aware that the Pársís had, under distinguished legal advice, prepared a partial Code of Civil Law, including Chapters on Marriage, Divorce and Succession. MR. MAINE, in his Statement of Objects and Reasons, had proposed that the Pársí Code should be considered *pari passu* with the draft of the English Law-Commissioners, who were themselves of opinion that the law which they had framed should suffice for the Pársís. But the heads of the Pársí community objected to that course, on the ground that no one could say how long it would be before the Indian Civil Code became the law of India. MR. MAINE fully admitted the force of that objection as regarded the Chapters on Marriage and Divorce. He was therefore quite willing that the Chapters of the Pársí Code on those subjects should become law whenever his honourable friend, Mr. Anderson, introduced them. But he, MR. MAINE, still proposed to consider the Commissioners' draft of the succession law together with that of the Pársís. He, in fact, hoped that the first Chapter of the Indian Civil Code would be passed before the Council separated in the Spring, and therefore the objection of the Pársís as to time would be met. If the Pársís turned out to have an invincible repugnance to certain provisions of the Code, special legislation on their behalf might be carried through before the sittings were ended. MR. MAINE was not unaware of the nature of certain specific objections of the Pársí community to particular rules laid down by the Law-Commissioners; and as to some of them, he had a pretty strong opinion of his own. He hoped, however, that he was not so pedantic as to press an abstract opinion against an ancient and venerated usage, when no great practical evil resulted from it.

MR. MAINE then proceeded as follows:—"One thing more I have to say. I venture to predict that when the first Chapter of the Civil Code has been examined and discussed by the Council and its Committee, the strongest impression left on their mind will be respect for the Commissioners who prepared it. I know, of course, that they had the assistance of able subordinates. But still, after making every allowance for that advantage, it remains wonderful that these Commissioners, overtasked Judges, hardworked practising Barristers, gentlemen immersed in politics or in the duties of office, should have found time to superintend and control the preparation of a body of law, in which, not only has

each separate proposition been carefully considered and measured, both as to form and substance, but the bearing of each and every proposition on the residue has been forecasted and ascertained. Perhaps, however, now that I perceive what the true objects of the Commissioners have been, my surprise is less than that of others; for I have seen enough personally of the real luminaries of English law to know the falsity of the ignorant delusion that there is something in great technical knowledge and great practical aptitude which implies a contempt for theoretical perfection. My own experience—it is necessarily limited, but still I state a fact—is that, in proportion to the judicial or professional eminence of an English lawyer is his sensitiveness to the undoubted faults of English law, and his anxious desire that, to that strong and solid structure of common sense which constitutes its mass, there should be added excellencies to which it certainly cannot at present lay claim—simplicity, symmetry, intelligibility, and logical coherence. Knowing this, I scarcely marvel that these gentlemen should have devoted much of a leisure which they can ill spare to the preparation of a Code which, to judge from this first instalment, while it preserves all that is best worth keeping and of most general application in English law, combines it with a simplicity of form and an intelligibility of statement which a French Codifier might envy. And their reward, and that of all who have taken part in these Indian Codes will be—I may say that without presumption, as I have no share in the earlier Codes, and expect to have little more than a mechanical part in this—that their labours are probably destined to exercise hardly less influence over the countless communities obeying English law, than the French Codes have exercised, and still exercise, over the greater part of the Continent of Europe."

The Hon'ble Mr. Anderson said—"I wish, Sir, to submit a few observations to the Council on a subject to which allusion has been made by my honourable friend, the mover. I have been entrusted by the Pársí community of Bombay with the charge of their Draft Code of Laws, by which it is proposed that inheritance, succession, marriage, and divorce among Pársís shall be regulated. With respect to marriage and divorce, I believe it is universally admitted that the Pársís are entitled to separate and immediate legislation; but the question has arisen, and will hereafter have to be decided, whether, with respect to inheritance and succession, they shall be bound by the provisions of the Civil Code which has now been introduced, or whether they shall be permitted to have a Code of their own. Under these circumstances, I consider it my duty to state briefly to the Council the course which I propose to pursue. I should first mention that the Pársís are strongly averse from being rendered subject to the Civil Code, and I have very recently received a telegram from the President of the Pársí Law Association, stating that, on the 22nd instant, a memorial had been forwarded to the Governor General through the Bombay Government, praying that

Pársís might be exempted from the operation of the Code. The objection of the Pársís to the Code is not, except on one ground, a general one, but rests upon certain specific considerations. The general ground to which I allude is the impression noticed by my honourable friend, that the Indian Civil Code will not become law for the next twenty-five years. That objection has been removed by the resolution of my honourable friend, to endeavour to pass the Code Chapter by Chapter, a resolution which, in my humble opinion, is founded on the soundest policy. Of the particular objections, some, I think, the Pársís may be induced to abandon; others, I am certain, are insurmountable, and, I think, justly insurmountable. The course, then, which I propose to pursue is to submit, at an early date, to the Council, a Bill providing for the regulation of marriage and divorce among Pársís, to offer no objection on their behalf to the Code as it stands, but eventually to introduce a measure exempting the Pársís from the operation, not of the whole Code in relation to inheritance, but only from the operation of such particular provisions as may be opposed to their feelings and usages. The proposed measure will also enact what the law as to inheritance will be for Pársís, on the points of divergence from the general Code. By this course, the Pársís will, generally, obtain the benefits of the admirable law which has now been introduced, and they will be saved from the incidence of those provisions to which they are with justice opposed. I say with justice, because I cannot imagine any legislative assembly being insensible to some of the objections which have been urged by the Pársí Law Association, and which have been considered valid by Sir Joseph Arnould and Mr. Newton, two Judges of the High Court of Bombay, who were appointed to investigate and report upon the whole subject. I will briefly mention two of the objections. The Pársís, as a rule, partake of the not uncommon feeling of aversion from making wills. By a return with which I have been furnished, I find that only two hundred and forty wills have been registered by Pársís in the late Supreme Court and present High Court of Bombay in thirteen years. The wills thus registered were principally made by those whom we may term "Anglicized Pársís." Under these circumstances, the Pársís, as a community, will be amenable to the provisions relative to an intestate's property. But in the 31st Section of the Code, it is provided that when a person dies intestate, an equal division of his property shall be made among all his children. This is totally opposed to Pársí usages and feelings. They would give the female a share, but not an equal share with the male children, and they justify this distribution by the fact that certain religious and social duties are, by their creed and customs, imposed upon the male heirs. The other objection to which I would allude is that the table of kindred given in the 25th Section does not accord with their customs as to proximity of relationship. The Council is well aware how close in all Oriental countries and communities is the connection between Religion and Civil Law: so complete is generally the fusion between these rules of conduct, that it is almost impossible

exactly to indicate where the one ends, and the other begins. I think, therefore, the Council should be very cautious that, in pressing a Civil law upon the Pársís, it does not impose upon them a burthen obnoxious to their religious sentiments. The course which I propose to follow will, I trust, be acceptable to the Pársís, as I am convinced that it will, on the whole, be the one most beneficial to their interests, and I hope that the Council will be induced, when the proper time comes, to assent to a measure which will not impair the symmetry of the Indian Civil Code, while it will relieve an ancient race from such provisions as are opposed to their social and religious feelings. I shall feel the less reluctance to ask the assent of the Council to such a measure, because I am strongly of opinion that the Pársís have a valid claim to the sympathy of an enlightened Government. As a community, they have always evinced eminent loyalty, and a most noble public spirit. There are among them citizens of whom any nation might be proud. Since I left Bombay, I have read the speech of Sir Jamsetjee Jeejeebhoy when presiding over a meeting convened to concert measures for the relief of the sufferers from the late Cyclone. That gentleman, a most worthy son of a most excellent father, is reported to have called on the Natives of the Bombay Presidency, 'to show that they were determined to cast in their lot with the great British Government, and to stand by that Government with their fortunes, as they would, if need were, with their lives.' This is language to which no Government, no section of English society, can ever be insensible.

I have only to add, in conclusion, an expression of my admiration of the wisdom with which the Indian Civil Code has been framed, and to state my belief that it will hereafter occupy a conspicuous position in jurisprudential history."

The Hon'ble Mr. Maine said that the course which Mr. Anderson proposed to take, had his entire approval. No community had a stronger title to the consideration of the Government and the Legislature, than the Pársís. If he, Mr. Maine, still expressed in Committee his doubts of certain of the provisions which they preferred to the rules of the Law-Commissioners, it would not be from obstinate adherence to an opinion, but from a feeling that the Pársís were a rapidly advancing community, and that, therefore, it would be a pity to tie them down to rules which, from a certain point of view, must be regarded as backward or retrograde, and which, in a few years, they might wish to have changed.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Indian Civil Code, Chapter I—The Hon'ble Messrs. Harington, Maine, and Anderson, the Hon'ble Rájá Sáhib Dyál Bahádur, and the Hon'ble Messrs. Muir and Cust.

The Council then adjourned.

WHITLEY STOKES,
Offg. Asst. Secy. to the Govt. of India,
Home Dept. (Legislative.)

CALCUTTA,
The 25th November 1861.

Office Suptd. Govt. Printing.—No. 1180 L. C.—4-8-66.—56.

Abstract of the Proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Friday, the 2nd December 1864.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding*.
His Honour the Lieutenant-Governor of Bengal.
Major-General the Hon'ble Sir R. Napier, K.C.B.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble Sir C. E. Trevelyan, K.C.B.
The Hon'ble H. L. Anderson.
The Hon'ble Claud H. Brown.
The Hon'ble Mahárájá Vijayaráma Gajapati, Ráj Bahádur of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble W. Muir.
The Hon'ble R. N. Cust.
The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Máhárájá of Burdwan.

CALCUTTA GREAT JAIL BILL.

His Honour the Lieutenant-Governor of Bengal, in moving for leave to introduce a Bill to remove the Great Jail of Calcutta from the control of the Sheriff and transfer it to that of the Government of Bengal, said that the Great Jail of Calcutta, including that portion of it which was known by the name of the House of Correction, was before the year 1862, under the exclusive control of the Sheriff. He was responsible to the High Court for the management of the Jail and the safe custody of the prisoners. His duties were defined by the Common Law of England and the provisions contained in the Charter of the late Supreme Court. But he was in no way responsible to the Government for the proper discharge of the duties of his office. After the separation of the House of Correction from the rest of the Great Jail, the Sheriff's authority was so far limited, with his own consent, that the House of Correction was placed under the Commissioner of Police, who was made responsible to the Government for the safe custody of the prisoners confined therein, and for the management and discipline of it. But he had no legal power or status in the House of Correction except as a Justice of the Peace; and the whole legal power was vested in the Sheriff.

The control of the Government, such as it was, was simply exercised on sufferance. Government had no more legal authority than the Commissioner of Police. This state of things, as might be supposed, was found to be productive of great inconvenience, and matters were brought to a crisis when the House of Correction became a place of intermediate imprisonment for criminals sentenced to penal servitude. The House of Correction, which was intended only for the safe custody of offenders sent there by the Justices of Calcutta and the Police Magistrates, was wholly unfitted for the custody of the desperate offenders sentenced by the High Court to penal servitude. The consequence was, that an Act was passed by the Government of India in 1862, relieving the Sheriff of all responsibility as to that part of the Great Jail of Calcutta which is called the House of Correction, and placing the legal as well as the practical responsibility on the Commissioner of Police, or on such other Officer as might be appointed by Government for the purpose. At the same time, an Act was passed by the Bengal Council, defining the duties of the Commissioner of Police or other Officer, and providing also for the inspection of the House of Correction and the Great Jail by visiting Justices. The Justices had performed the duties required by the Act, and had from time to time made reports to Government, in which they represented that the House of Correction was over-crowded and very ill-conttructed. The result was that a Committee was appointed to enquire how these defects were to be remedied. A further large portion of the Great Jail, as distinguished from the House of Correction, was consequently separated off and made available for the confinement of prisoners sentenced to imprisonment in the House of Correction.

Shortly after this, a case occurred, which excited considerable attention, in which a prisoner died through the ill-treatment of a Native subordinate in the Jail. The Commissioner of Police exerted himself to ascertain the circumstances, and to give the Coroner facilities in prosecuting the inquest; but it became quite clear that it was impossible that the Jail could be managed by an Officer like the Commissioner of Police, not residing within the limits, and that the establishment necessary for the safe custody of so large a body of men needed the supervision of an Officer on the spot. Another circumstance was that, although the visiting Justices had certainly discharged their duties in an exemplary manner, and had brought to notice several defects in the working of the institution, it was clear that some more systematic inspection was necessary, and that the House of Correction and Great Jail of Calcutta should be subjected to scientific and regular inspection, as in the case of Jails in the Mofussil, under the supervision of the Inspector General of Jails. The first step to bring this about was of course to procure the passing of such a law as it was now His Honour's intention to propose, namely, to relieve the Sheriff of all responsibility in the Jail, and place the Officer in charge of the Jail under the authority of the Inspector-General, and, through him,

of the Government of Bengal. His Honour had consulted the learned Chief Justice, Sir Barnes Peacock, on the subject, and he agreed in thinking the measure desirable, on the understanding that the Sheriff be relieved of all responsibility for prisoners when made over to the Keeper of the prison. Accordingly, a proposal of that kind was made to the Government of India, but up to the present time there had been no opportunity of carrying it into effect. His Honour did not think that any objection was likely to be made to the Bill, which it was proposed to introduce. The only points on which doubts might arise were, first, as to the pecuniary responsibility of the Sheriff with regard to the Civil prisoners; and, secondly, as to Native prisoners who were confined in the Jail, and who, so long as they remained within the local jurisdiction of the High Court, were entitled to the benefit of that law, but who, if removed therefrom would lose that benefit. As to the first, the Sheriff was now, in theory, responsible in personal damages to a creditor if his debtor escaped from the Great Jail. But His Honour could not find, from enquiries which he had made, that the Sheriff had ever in fact been made answerable in that way for such an escape. Such responsibility was a remnant of a long-past state of things; and there was no reason why it should be continued under present circumstances. If a Civil prisoner was committed to Jail, the Keeper was bound to exercise the same care as in the case of a Criminal. His Honour was not aware of any reason why his responsibility for one should be greater than for the other. Secondly, as to the Habeas Corpus—it only affected Natives, or rather those who were not European British subjects. As to Natives confined in the House of Correction under sentence of a Magistrate, His Honour's impression was that they were already liable to be removed from the House of Correction to any Jail in the Lieutenant-Governor's jurisdiction; and, as regarded the prisoners sentenced by the High Court, it was equally certain that they might be so removed by order of the Government of India; so that the only consequence of transferring the control of the Jail from the Sheriff to the Government would be this, that whereas now the Government of India could order the removal of a Native prisoner from the Great Jail to a Mofussil Jail, if the Bill which it was now proposed to introduce became law, these prisoners would be removed by the order of the Lieutenant-Governor of Bengal. Mr. Maine, in his speech the other day, mentioned that the Lieutenant-Governor of Bengal, rather than the Governor-General in Council, was the representative of the despotic principle in the Government. If so, it might be said that if the proposed change of law were carried out, the prisoners would be less scrupulously dealt with. His Honour hoped that much weight would not be attached to that objection.

The Hon'ble Sir Robert Napier had great pleasure in supporting the Bill proposed to be introduced, for two reasons: first, it was evident that the Jail

would be much better managed under concentrated than divided control, and, secondly, it would be the first step towards removing the Jail from its present position and towards the construction of another Jail worthy the Capital of India and better suited for its purpose than the present building.

The Motion was put and agreed to.

MARRIAGE ACT AMENDMENT BILL.

The Hon'ble Mr. Anderson, in moving for leave to introduce a Bill to amend Act XXV of 1864 (to provide for the solemnization of marriages in India of persons professing the Christian Religion), said.—" This measure has, Sir, been rendered necessary by a variety of causes, which I will briefly explain to the Council. The recent Marriage Bill has, I am glad to say, been received as a boon by the Christian community in India, with the exception of one important section. It has especially been received with satisfaction by the Members of the Church of Scotland, and by all bodies of Protestant Dissenters; and it has been accepted in a most liberal spirit by the Bishops and Clergy of the Church of England. The circumstances which render further legislation necessary are, with one exception, of no remarkable importance. The Government of the Straits has expressed a strong desire that the Straits' Settlement be included within the operation of the new law, and it has been thought desirable that advantage should be taken of the opportunity thus afforded to introduce such other alterations in the Act as subsequent experience has suggested. We have been provided with a more simple and comprehensive form of registration than that which is appended to Act XXV of 1864, and there are some other slight modifications in matters of detail which it will be good policy to adopt. But my object in asking at the present time for leave to introduce an amending Bill, is to avail myself of this early opportunity of assuring an important section of the community, the Roman Catholics, who have expressed great dissatisfaction with certain provisions of the Marriage Act, that this Council has a sincere desire to relieve them from any hardship which that Act may have inadvertently imposed upon them. I have had the pleasure of discussing some of the objections advanced against the Act with a gentleman for whom I have the greatest respect and esteem, Dr. Stevens, the Roman Catholic Bishop of Bombay, and I feel that there will be no difficulty in meeting his views. But the opposition to the Act which has been the most loudly and warmly expressed, has proceeded from the Bishops, Clergy, and congregations of the Madras Presidency, and especially of the southern portion of that Presidency. To these objections I shall now address myself. Their dissatisfaction is principally directed to Part II and Part V of the Bill. Now, first, with reference to Part II. They point out that certain forms, preliminary, attendant, and consequent, such as written notices, delays of fourteen days, and other similar precautions, will be, in practice, of the greatest possible inconvenience to their congregations, and they

urge that, from these provisions, the Church of England and the Church of Scotland are exempted. I would here state that the Select Committee was well aware that precautions substantially similar to those to which the Roman Catholic Clergy have objected, were actually in force in the Churches of England and Scotland, and it was thought advisable to leave the rules of these Churches intact. But the Select Committee did not know what precautions in relation to the solemnization of matrimony were in force in Roman Catholic congregations, or whether there was or was not an uniformity of practice amongst those congregations throughout India. And I would here remark that this portion of the Act, which was framed by the late Mr. Ritchie, was before the public for two years, but I do not recollect that there was any marked expression of dissatisfaction with the provisions now under discussion. Those provisions had simply in view certain civil objects, and in no way touched on the religious sanctions of the marriage ceremony. But as the opinion of the Roman Catholic community has been strongly expressed against those sections, and as it has, I admit, been fairly shown that they impose, not hardship, but inconvenience, on a portion of the community, I am personally most willing to endeavour to devise a remedy. I should also mention that the provisions of Part II are guarded and enforced by penalties enacted in Part VI, and it is regarded as a grievance by the Roman Catholic Clergy that they should be subject to penalties from which the Clergy of English and Scotch Churches are exempt. The feeling here involved is, I believe, rather one of dignity than of practical hardship; but I am quite willing that the feeling should be respected. I shall therefore propose, in the new Bill, to substitute for the words "Clergyman of the Church of England, according to the rules, rights, ceremonies, and customs of that Church," in the 7th Section, the words "Clergyman who has received Episcopal ordination according to the rules, rites, ceremonies, and customs of the Church of which he is a Minister." The Clergy of the Church of Rome will be thus included within the exception, and relieved from the operation of the provisions of Part II, to which they object.

Next, with reference to Part V—The Clergy of the Church of Rome object first to the principle, and then to some of the details. Their objection to the principle may, I imagine, be thus stated :—The Church of Rome have held, since the Council of Trent, that the presence of a Priest is necessary to the validity of a marriage. If, then, the marriages under Part V are to be valid, they must be performed by Priests. The licenses under Part V must be received by Priests. But it is utterly opposed to the doctrine and practice of the Church of Rome that a Priest should, *quoad* his sacerdotal functions, receive any authority from the secular power. They also object to some of the details of Part V : they object to the restrictions on age, on consanguinity and affinity, and to other provisions. They state that, in Southern Madras, a man may be compelled by his social

status to marry his own niece. To all those statements, I have one simple and sufficient answer—that only those who are willing need be married under the provisions of Part V. Those who prefer the longer and more impressive ceremony, are not compelled to resort to the more simple form which this Part permits. Roman Catholics will therefore be married according to the forms prescribed by their Church, and should any question arise in a Court of law as to the validity of a marriage between a man and his niece, it will be for them to satisfy the Court that the union is in accordance with the rites, rules, ceremonies, and customs of the Church of Rome.

I should, however, state, I am so perfectly convinced of the utility of Part V, that I shall propose to extend its operation to all Native Christians who may wish to avail themselves of its provisions, and not to restrict it, as at present, to Native Converts.

An objection has also been advanced to Part III of the Marriage Act, which prescribes the hours within which all marriages shall be performed in India. The Clergy of the Church of Rome have stated that this rule interferes with the solemnization of what may be called death-bed marriages, which are frequently of urgent necessity, as, without such marriages, the last sacraments of the Church cannot be administered. I shall propose, then, to give to the Bishops of the Church of Rome, the same power of permitting their Clergy to solemnize such marriages, as is conferred by implication under the Act on the Bishops of the Church of England. But I feel it my duty to invite the attention of the Council to a passage in a letter of Bishop Fennelly, which I have read with considerable astonishment. In speaking of death-bed marriages, he says :—

"In all this there is nothing, even for a legacy-hunter, to find fault with. But if we make the case a little different, and suppose the man to have no children, room will be found for insinuations of undue influence on the part of the Priest, although the Priest's duty is exactly the same in both cases, to prepare the man for death, and (in the possible event of his recovery) to guard him, as far as may be, from the dangerous occasion of relapse. If he dies intestate, his widow as before will be entitled to one-third of his property, and the remainder will go to his next of kin. If God spares him time enough to make a Will, his relatives will most likely be thrown out. Placed on the verge of eternity he sees things in a different light; as he loved his money during his life, he is determined to turn it to the best account at his death; the widow and the orphan will have their shares. Possibly, a professorship may be founded in the University, and a large sum set aside for the improvement of the Kuam, or for the supply of fresh water to the town of Madras."

Now, in assenting to the legalization of death-bed marriages, I wish especially to guard myself against any recognition, however remote, of the views thus enunciated by a Bishop of the Church of Rome. There is a section in the Indian Civil Code, which was introduced at the last meeting by my honourable and

learned friend, Mr. Maine, which is directly opposed to the opinion expressed by Bishop Fennelly. That Section in effect provides, that if a testator have near relatives, no bequest to a charitable institution shall be valid, unless the Will shall have been executed twelve months before the death of the testator, and deposited within six months of its execution in some place provided by law for the safe custody of Wills of living persons. The Section is founded on the provisions of 9 George II, cap. 36, commonly, though not with exact propriety, called the Statute of Mortmain. It was, probably, so called, because it was in some degree analogous in spirit to the various Mortmain Statutes which have been passed since Magna Charta. The history of the term Mortmain is the history of a long struggle between the Legislature, even when it was Roman Catholic, and the Clergy. The ecclesiastical houses at first endeavoured to evade the law by instituting collusive actions against the donor; the donor, after a faint show of resistance, suffered judgment to go by default, and the plaintiffs entered on possession. This was defeated by a Statute which provided that, after the defendant's default, the title of the plaintiff should be submitted to a separate scrutiny. Then the Clergy endeavoured to introduce a distinction taken from the Roman law, between legal ownership and beneficial ownership, and arranged that the property should be conveyed to a layman and his heirs, who allowed the ecclesiastical house to receive the profits. This practice the Legislature in the reign of Richard II declared to be Mortmain. The Statutes of Henry VIII and Edward VI, relating to charitable and superstitious uses, were framed in the same spirit; but their provisions have been greatly modified by the wisdom and liberality of modern legislation. The animus of English laws has always been against Bishop Fennelly's views, and I therefore think it right plainly to state that I shall give my firm support to the principle contained in the 108th Section of the Indian Civil Code, and I trust that my honourable friend will never be induced to abandon it.

I trust, Sir, that the amending Bill which I now ask leave to introduce, will afford real and permanent relief to those who feel themsleves aggrieved by some of the provisions of the Marriage Act."

The Motion was put and agreed to.

CEDED LANDS' BILL, AND JUDICIAL SUPERINTENDENT OF RAILWAYS' BILL.

The Hon'ble Mr. Maine asked permission to postpone the two motions which stood next in the list of business. A despatch had just been received from Her Majesty's Government, which might render one or both of those Bills unnecessary.

Leave was granted.

RURAL POLICE (N W. PROVINCES) BILL.

The Hon'ble Mr. Muir, in moving for leave to introduce a Bill to provide for the maintenance of the Rural Police in the Territories under the Government of the Lieutenant-Governor of the North-Western Provinces, said he would briefly state the circumstances which had led to the preparation of the Bill and the nature of the proposed measure. Originally the Chaukídárs in the North-Western Provinces were remunerated by land—Jagirs granted at the time of the Settlement; but it was found that the care of the land occupied their time; that it was insufficient for their support, and that in seasons of drought, it failed altogether at a time when their attention to their duties was most needed.

It had therefore been the tendency of the Government ever since the last Settlement to provide for their remuneration in money and not in land. Such remuneration formed a charge upon the rental of the estates to which they were appointed. This principle it was not proposed to alter in the present Bill.

In the rules for the Settlement now in progress in the North-Western Provinces, prepared by Mr. Colvin, the rules for the remuneration of village Chaukídárs were as follows:—For every sixty houses a Chaukídár was appointed, whose pay was three rupees a month; under the adjustment of revenue made at the time of the Settlement, one-half of the expense fell on the Government and one-half on the Zamíndár.

This system was faulty in two respects. First, it pressed unequally on the Zamíndárs. The number of watchmen was regulated by the number of houses on each estate at the time of the Settlement. Where the estate was small and the number of the houses large, the loss to the Zamíndárs who had to defray the salary of several watchmen was considerable. Where the estate was large, and the houses few, the charge fell lightly. And where there were no houses, or a number not sufficient for the charge of a Chaukídár, the estate was subject to no demand at all, though such property might be very materially benefited by the Village Police of the neighbouring estate. In short the incidence of the assessment was neither uniform nor fair. The next point was that there was no provision for contracting or enlarging the number of Chaukídárs to meet variations in the population and the growth or decline of villages. The appointment of Chaukídárs, once made, continued unaltered during the term of the Settlement. In the case of temporary Settlements, that could be remedied at the next revision, but wherever the permanent Settlement was introduced, such a re-adjustment would not be possible.

It was proposed to meet these defects by drawing upon two sources of income. First, a uniform Municipal Cess at two rupees twelve annas per cent. on the land revenue. The authority of the Council wasnot required for this payment, inas-

much as the obligation to make it formed part of the Settlement arrangement, and as such was binding. Legislative authority, however, was required to enforce a corresponding demand in Muáfí and Nazráná villages, the proprietors of which were bound to make the same provision for the Village Police as the proprietors of assessed estates. The second source was a sum not exceeding in each case one rupee, which it was proposed the proprietors should be authorized to levy on the occupants of every house upon their several estates. Objections had been raised to the Chaukídarí tax on houses; and no doubt the history of that tax was unfavourable to its continuance. But those objections would not apply to the present Bill. Hitherto the tax had been assessed and collected by Government officials, but if this Bill became law, it would be assessed and collected by the Zamíndars themselves in the same manner as other village rents and dues. Dues of that nature were already exacted by the proprietors in various parts of the country, and there was nothing in the practice distasteful to the people. The action of the Collector would be restricted to giving relief in cases of illegal demand, or, as Mr. Harington had suggested, of inability to pay. The provisions of the Rent Law would be made generally applicable to these assessments, which would be entered like other rents and dues on the village records. The Collector or the Officer making the Settlement would be authorized, under the Bill, to assess the proprietor in the aggregate amount of the house assessment for his estate, less ten per cent. to cover the cost of collection. This would be paid annually to Government as revenue, and be realizable as such. The assessment would be subject to revision from time to time, so as to meet the local changes in population, and the number of Chaukídárs would, as occasion required, be increased or diminished. The income arising from the Municipal Cess and the Police assessments would be thrown into a fund, available, in the first instance, for the payment of the Village Police. The residue, if any, might be devoted to sanitary and general municipal purposes. The Board of Revenue in sending up the Bill propose that it might further be devoted to purposes of general improvement connected with rural administration, such as local Agricultural Exhibitions.

The Act would take effect only in the Districts or parts of Districts to which the local Government might extend it. Mr. Cust had suggested that the Bill, if good for the North-Western Provinces, would be good for the Punjab also. A Section had accordingly been inserted, which would enable its extension by the local Government to the Punjab. The Government of India was also empowered to extend the provisions of the Act to any province under its immediate administration.

The Motion was put and agreed to.

COMMON CARRIERS' BILL.

The Hon'ble Mr. Maine introduced the Bill relating to the rights and liabilities of Common Carriers, and moved that it be referred to a Select Committee, with instructions to report in four weeks. He said that, though this was a short Bill, he believed it would be of great value in the Mofussil. To explain the measure he might remind the Council that the general law of most European countries, that is, the *primâ facie* law as unmodified by special agreement, imposed extraordinary liabilities on common carriers, being persons who made it their business to convey goods from place to place by land or by river. They were made absolutely, or nearly absolutely, responsible for the safe custody and safe delivery of the goods committed to them, and no excuse for the non-performance of their contract was admissible. Whether this severe law obtained in India was matter of uncertainty—an uncertainty which surrounded so many questions of Indian Mofussil law. The better opinion seemed to be that, even in India, obligations of unusual and exceptional stringency were imposed upon carriers. But it was unnecessary to discuss the point, as the Indian Law-Commissioners were understood to be addressing themselves to the Chapter of the Civil Code on Contract, and will have to take up incidentally the liabilities of carriers. Mr. Maine had hitherto been speaking of the primary and general law, of the obligations incurred by carriers by the bare fact of their contracting to convey and deliver goods. Those obligations might, however, be modified indefinitely by special agreement. The practical result, therefore, was, as in so many cases of one-sided and inequitable law, exactly the reverse of that intended by the designers of the primary rules—always supposing it could be spoken of as deliberately intended, for it was in truth of such antiquity that it was almost idle to speak of it in connection with fixed design. It was found that common carriers habitually resorted to a number of expedients for delivering themselves from their extraordinary liabilities. Either they put up in their place of business a board or table, stating the conditions on which they would receive goods, and, if it could be shown that these conditions came to the notice of the customer, they were binding on him; or perhaps they placed in his hands a written or printed paper containing similar conditions, and the receipt of such a paper, followed by delivery to the carrier, would almost in every case constitute a special agreement. Practically, therefore, what the Legislature had to deal with was, not only the extraordinary severity of the general law to carriers, but also the extreme leniency and one-sidedness of the terms which carriers secured to themselves by special contract—terms which were often submitted to by the customer without his being aware of what he was doing. The Bill was intended to correct these mutual obligations. It was in accordance with English legislation on the subject, following the principle, though not the language, of the

English Statutes. The English rules were understood to have generally commended themselves to the approbation of the mercantile classes. If the goods for conveyance consisted of any of the articles enumerated in the Schedule—that is, were unusually valuable or unusually perishable—such as gold, jewels, paintings, engravings, or title-deeds—the customer, when committing them to the carrier, must give a special description of their character and value, otherwise the carrier would be relieved from liability. On the other hand, the carrier was allowed to charge an additional rate as insurance against the augmented risk, in conformity with a scale of charges to be publicly exposed in his place of business. If, however, the goods were of an ordinary kind, neither unusually valuable, nor unusually destructible, the carrier would not be allowed to acquit himself of his obligations merely by putting up a table or board. His only mode of mitigating his general responsibility would be by special contract, which Mr. Maine was inclined to think—though that was not in the present Bill—ought to be a document signed by the customer or his agent.

The remainder of the Bill was framed to place railways constructed under Act XXII of 1863, or tramroads as they were sometimes called, on the same footing as regarded liability for the carriage of goods as railways constructed under the general Indian Railway Act. In his Statement of Objects and Reasons he had attempted to explain what was the real purport of the provisions of the Act on this subject. The argument was somewhat technical, and he would not repeat it now. The rule adopted was a simple one. Railway Companies were liable for the negligence or misconduct of themselves or their servants or agents, and, of course, for fraud; but were not otherwise answerable for loss. The explanation of that rule was as follows: a Railway Company, both in India and in England, was so powerful a body; it had such a virtual monopoly of the carriage of goods along the line of country which it occupied, that, if it were left to itself, it would probably contract itself out of all its liabilities. It would constrain its customers to accept such special terms that it would be liable under no circumstances and for nothing. The Indian Railway Act accepted this advantage of Railway Companies up to a certain point; but it stopped there, and absolutely forbad Railway Companies to relieve themselves in any manner from liabilities incurred through negligence or positive misconduct. The rule was a simple one—much simpler than that adopted by the English Parliament, which, indeed, had fallen into several legislative miscarriages in its dealing with this subject. Mr. Maine was further informed by gentlemen conversant with the practical working of the law, that the rule in India was found convenient and easy of application. And indeed, even if the inconvenience were greater, the Council would probably be of opinion that Railways formed under the new Act should not stand under different obligations from those which attached to railways governed by the older Indian enact-

ment. Mr. Maine had to add that he had received some valuable suggestions from a learned Judge of the High Court, Mr. Justice Levinge, who had had much experience of the working of the law of carriers during his practice at home. These suggestions, which referred chiefly to matters of detail, Mr. Maine would submit to the Select Committee.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill relating to the rights and liabilities of Common Carriers.—The Hon'ble Messrs. Harington, Maine, Brown, Bullen, and Cust.

The Council then adjourned.

WHITLEY STOKES,

Offg. Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

CALCUTTA,
The 2nd December 1864.

Government Central Press.—No. 593 L. D.—25-4-76.—60.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Friday, the 9th December 1864.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding*.
Major-General the Hon'ble Sir R. Napier, K.C.B.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble Sir C. E. Trevelyan, K.C.B.
The Hon'ble W. Grey.
The Hon'ble H. L. Anderson.
The Hon'ble J. N. Bullen.
The Hon'ble Mahárájá Vijayarámá Gajapati, Ráj Bahádur of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble G. Noble Taylor.
The Hon'ble W. Muir.
The Hon'ble R. N. Cust.
The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble D. Cowie.

The Hon'ble Mr. Cowie took the oath of allegiance, and the oath that he would faithfully discharge the duties of his Office.

RURAL POLICE (N. W. PROVINCES) BILL.

The Hon'ble Mr. Muir applied to His Excellency the President to suspend the Rules for the Conduct of Business, in order to enable him to move that the Bill which he obtained permission last Friday to introduce, be introduced to-day, although it had not been in the hands of the Members for seven days, as required by Rule 16, in order that it might thus be passed within a shorter period than was provided in Rule 20.

The President declared the Rules suspended.

The Hon'ble Mr. Muir then introduced the Bill to provide for the maintenance of the Rural Police in the Territories under the Government of the Lieutenant-Governor of the North-Western Provinces, and moved that it be

referred to a Select Committee, with instructions to report in five weeks. He said that the object in having the Bill passed quickly was, that the Settlement which had been commenced in the North-Western Provinces was making rapid progress in various districts, and all that was done under the present rules relating to the appointment of Village Watchmen would have to be amended when the Bill became law. The Settlement of the Land Revenue would, as explained on a former occasion, be subjected to some modifications under the new rules, and the records would also have to be altered. Unless, therefore, the Bill became law at an early period, a good deal of inconvenience would be caused both to the Officers of Government and the people, and considerable expense in doing again what had been done before. As the Bill related to the North-Western Provinces, five weeks would, he supposed, be amply sufficient to enable all persons concerned to consider its provisions and report their opinions.

The Motion was put and agreed to.

ACTS AND REGULATIONS' EXTENSION BILL.

The Hon'ble Mr. Harington applied to His Excellency the President to suspend the Rules for the Conduct of Business. He said, as the Bill merely proposed to give power to the Governor-General in Council to extend Acts and Regulations now in existence, to places under the immediate administration of the Government of India in which those Acts and Regulations were not in force, the publication of the Bill for any long period seemed unnecessary, and he believed that great public convenience would result from the Bill passing into law on an early date. This was his reason for proposing that the Select Committee should be required to make their report in two weeks.

The President declared the Rules suspended.

The Hon'ble Mr. Harington then introduced the Bill to authorize the Governor-General of India in Council to extend to the Non-Regulation Provinces under the immediate administration of the Government of India, Acts and Regulations not in force in those Provinces, and moved that it be referred to a Select Committee, with instructions to report in a fortnight. He said that when he had asked for leave to introduce the Bill, he had explained the objects and reasons of it, and he had nothing more to say on those heads. But it had been suggested to him that the Bill would be rendered more useful if the power proposed to be given to the Governor-General in Council, as regarded the places under the immediate administration of the Government of India, were extended to the Governments of the North-Western Provinces and of the Punjab—to the former Government for the Non-Regulation Provinces subject to its authority, and to

the latter Government for the Punjab and its dependencies. The suggestion deserved consideration, and he proposed in Committee to move the insertion of a Section which, if adopted, would effect what had been suggested.

The Motion was put and agreed to.

CHIEF COURT (PUNJAB) BILL.

The Hon'ble Mr. Cust said that, as the Bill for amending the constitution of the Court of the Judicial Commissioner of the Punjab and its dependencies had been only a short time in the hands of Hon'ble Members, he begged leave to postpone the motion which stood in the list of Business relating to that Bill.

Leave was granted.

The following Select Committees were named :—

On the Bill to provide for the maintenance of the Rural Police in the Territories under the Government of the Lieutenant-Governor of the North-Western Provinces—The Hon'ble Messrs. Harington, Maine, and Anderson, the Hon'ble the Mahárájá of Vizianagram, the Hon'ble Rájá Sáhib Dyál Bahádur, and the Hon'ble Messrs. Taylor, Muir, and Cust.

On the Bill to authorize the Governor-General of India in Council to extend to the Non-Regulation Provinces under the immediate administration of the Government of India, Acts and Regulations not in force in those Provinces—The Hon'ble Messrs. Harington, Maine, Muir, and Cust.

The Council then adjourned.

WHITLEY STOKES,
Offg. Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

CALCUTTA,
The 9th December 1864.

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Abstract of the Proceedings of the Council of the Governor General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., Cap. 67.

The Council met at Government House on Friday, the 16th December 1864.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding*.
Major-General the Hon'ble Sir R. Napier, K.C.B.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble Sir C. E. Trevelyan, K.C.B.
The Hon'ble W. Grey.
The Hon'ble H. L. Anderson.
The Hon'ble J. N. Bullen.
The Hon'ble Mahárájá Vijayaráma Gajapati, Ráj Bahádur of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble W. Muir.
The Hon'ble R. N. Cust.
The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble D. Cowie.

CIVIL JUSTICE BILL

The Hon'ble Mr. Maine introduced the Bill for the improvement of the administration of Civil Justice in respect of Suits of small value, and moved that it be referred to a Select Committee, with instructions to report in six weeks. He said—"This Bill, on its first appearance, attracted some interest and excited much discussion. I do not think that, in its present form, objection will be taken either to its principle or to its details. The controverted parts of the Bill were the Sections relating to specific performance, which I have now agreed to remove to the Code of my hon'ble friend Mr. Harington, where no doubt their proper place is. Apart from those Sections, nobody will doubt that the measure will contribute to the efficiency of the Small Cause Courts, and possibly to their extension. It will effect some mechanical improvements—considerable, no doubt, but still, in their nature, chiefly mechanical—in the organization of those Courts, which I consider one of the greatest of the benefits which the country owes to my hon'ble friend Mr. Harington. In one sense, indeed, the Bill cannot fail.

For it only empowers the Local Government, with the concurrence of the Governor-General in Council, to introduce the system which it creates into particular districts; and if experience and observation show that the existing arrangements possess any superiority, it will always be possible to re-establish them.

If one watches the practical working of Small Cause Courts—and no one has observed them with greater attention or interest than I have—one cannot help being struck that the principal drawback on the efficiency of the system, in Bengal at all events, is connected with these Courts being insulated tribunals. Whether or not that was intended by Mr. Harington, I do not know But it is the fact that Small Cause Courts in the Mofussil are mainly isolated tribunals, presided over by a single Judge. The result is that, if a neighbourhood be thickly populated, and litigation be consequently active, the Government can afford to establish a Court with a Judge of capacity, and to allot to him an adequate salary. If, however, the population be sparse, and there be, therefore, little litigation, then, as a Small Cause Court is an expensive Court to the extent to which its cost is not covered by its stamps, the Government cannot take upon itself the charge involved in the establishment of a Court of the first class. It is, therefore, driven to the alternative of either appointing an inferior Judge on a lower salary, or of joining other judicial functions to those of the Small Cause Court. Both those expedients seem to me violations of the principle on which Small Cause Courts are founded. Presently, I will say what that principle appears to be. It is enough now to state that the obvious remedy is to link Courts of the lower class together in groups, so that the suitors may have the advantage at all events of occasional and periodical visits by Judges of capacity. The Bill therefore provides for a Judge of the first class going circuit among these Courts, under rules to be laid down by the Local Government. Certainly, if we stopped there, I am not sure that the system would not break down; for, in every Court, there is a great mass of routine business to be done, and a good deal of business which I should call "semi-judicial." By this last name I should distinguish such duties as examining the plaint, or passing decrees in unopposed suits; and I should call 'routine business' that which is described in Sections 32 and 34 of the Bill. Such business imposes at present a heavy burthen on Judges, and it would become more onerous if judges only paid periodical visits and stayed but for a limited time. For remedy of this, the Bill adopts an English plan which has been very successful wherever a group of Courts subordinate to some great Court has been established—as, for example, in the case of the English Courts of Bankruptcy. A special Officer is appointed to dispose of the routine and of the semi-judicial business, subject, as to the latter, to the revision of the

judge. We call him by the English term Registrar. He will not be a mere clerk, but will be strictly subordinate to the Judge. In most cases, I suppose that he will be a Native gentleman of about the standing of a Moonsiff. I can conceive no better school for higher judicial employment, and the Bill provides that, when his capacity is assured, he may have jurisdiction conferred upon him up to a certain amount, stated formally at fifty Rupees.

I anticipate no opposition to the commitment of the Bill. But I may take this opportunity of stating my views as to the principles which govern the constitution of Small Cause Courts—principles which seem to me to be greatly misunderstood in India. It appears to be generally believed in this country, that a Small Cause Court is created by the simple expedient of cutting off an appeal. I can only explain such an impression by reference to the intolerable practical evils which, before the enactment of the Code of Civil Procedure and other recent laws, were caused by the extravagant facilities which the law furnished for appeals. I have here a well known book—the work of Mr. Gubbins on the Mutinies in Oudh. Into the later editions, the author introduced some passages (written, I should say, before the Civil Procedure Code became law, though published afterwards), in which he describes, not the causes of the mutiny (for, like most competent observers, he thinks the ostensible cause to have been the true one), but the grievances which ought to be removed before our administration can be entitled to that character of beneficence which it claims.

"A still greater source of weakness in our Civil Executive is found in the cumbrous and unsuitable mass of law with which our Indian Officers are shackled, and the numberless appeals to which their orders are subjected. Speedy and cheap justice is what is wanted in India; but any speedy and cheap decision would be better than what we give the people, *viz.*, slow and expensive law."

What, then, Mr. Gubbins says is simply this: give us cheap and speedy justice if you can; if you can't, give us at any rate cheap and speedy decision. Now, Sir, although I have been sometimes assumed to have been unreasonably hostile to appeals, I cannot say that I can go so far as that conclusion to which Mr. Gubbins was conducted by his practical experience of India. If I supposed that an appeal furthered justice, I should no more dream of dispensing with it than I should of deciding a suit by tossing up a rupee—which is both a cheap and a speedy method of decision. I say that if you organize a Small Cause Court properly, an appeal would not further but obstruct justice. My theory of a Small Cause Court is that, from the limitation of the suits to claims of a certain nature, it is almost exclusively a Court for the solution of questions of fact. Hence by considerably—not extraordinarily but considerably—elevating the capa-

city of the Judge, you are able to utilize to the utmost those inherent and natural advantages which every Court of first instance possesses in the decision of facts; that is, you are able to accept its decision in preference to that of any other Court which has not actually seen the witnesses and observed their demeanour. I am aware that I here approach the point upon which there is most difference of opinion between English lawyers and the gentlemen belonging to the judicial branch of the Civil Service. I should describe the Indian judicial system, apart from the original jurisdiction of the High Courts, as an exaggeration of that which is established in France. The weakest parts of the system are those at the bottom, the Courts of first instance: but their weakness is acquiesced in, because it is believed that a strong Court of appeal, sitting at a distance, and reading the evidence on paper, can successfully correct their mistakes. Now, in England, in the Courts of Common Law, which are the great Courts for the solution of questions of fact, a strong Court of first instance—probably the strongest in the world, a Judge and Jury—is at once placed in contact with the witnesses, and then its decision is accepted as conclusive by all other tribunals. Verdicts are sometimes disturbed. But the Court setting them aside does not substitute its own view of the facts: it sends the case back to be tried by another jury. Taking into account the simplicity of the questions, the same principle is applied in the County Courts also. Hence the astonishment—for I can use no other term—of an English lawyer new to India, at the system of regular appeal under which Courts of appeal freely substitute their own theory of the facts for the view of them taken by the Court below, which heard the story of the witnesses from their own lips. I admit that this surprise somewhat diminishes on further acquaintance with the country; for it is true that, owing to the uniformity of habit and inveteracy of routine among the people of India, it is possible to conjecture what took place in a certain case with a far higher degree of probability than could be attained in the active and diversified societies of Europe. I maintain, however, that the characteristic fault of the Indian judicial system is, that it greatly under-estimates the inherent advantages possessed by Courts of first instance, and greatly overrates the power of correction possessed by a Court of appeal. I will cite two cases which illustrate the difference of theory. The first is rather remarkable for this reason: it was a question of fact tried by the Court of Chancery. Until recently, Courts of Equity in England so far resembled the Indian Courts, that they relied mainly upon paper evidence, and it was only a certain class of cases which they sent to be tried in the form of an issue by the Courts of Common Law. Recently, however, the belief that no decision on facts is trustworthy which was not arrived at after actual examination of the witnesses has so gained ground that, by late Statutes, these Courts have been permitted and

directed to examine witnesses in open Court. The case I quote had, I fear, thus much of resemblance to an Indian case, that the plaintiff and her witnesses all swore to one thing, while the defendant and all his witnesses swore to the exact contrary. Here are a few words from the Judge who tried the case, one of the ablest and most patient on the bench, Vice-Chancellor Kindersley.

"In that state of things, there being oath against oath, inasmuch as the onus lay on the plaintiff, who alleged the promise, the decision must be against her, unless there were other circumstances not in dispute sufficient to lead to the conclusion that the defendant was not speaking the truth. His Honor thought there were—first, the letter, and then the interviews with Mr. Starling, and the pause and most expressive silence of the defendant."

Now, in an Indian regular appeal, I should like to know what became of that pause and expressive silence, which were obviously the most important material for conclusion in the judgment of the Vice-Chancellor. Would they be described on the record, and, if so, what effect would they have on the Sudder Court? Is it not clear that an Indian Court would have followed what, no doubt, is the presumption of law until displaced by contrary evidence? In other words, it would have done injustice and not justice.

My next case is one which I have to ask your Excellency's pardon for mentioning, as your name occurs in it, but it is so instructive that I must quote it in the interest of my argument. I take it from Mr. Gubbins' account.

"I recollect, in 1842, when Magistrate of Delhi, that I obtained information of a noted "forger, a Mussulman, who resided in the city. He had carried his craft into matters which "came before me criminally; and I lost no time in attacking him.

"It was deposed before me that forgery was his business; that he kept a variety of "seals of different names, and a large apparatus of all that was necessary to carry on his "iniquitous trade within his house. His arrest and the search of his house were carefully "arranged and successfully accomplished.

"The articles seized carried convincing proof of his guilt. He was committed for trial "on a charge of fraud and forgery; and John Lawrence (now Sir John) presided as Judge. "He was convicted; and a sentence of imprisonment for five years was passed. This was jus-"tice. But next came law: and, by the aid of the law, the forger came off victorious. He "appealed to the Sudder Court of Agra: and, ere long, a warrant, commanding the release "of the forger was received! The Court were not satisfied that the proof was legally sufficient. "And the Magistrate was cautioned to be careful how he searched the houses of respectable "men."

It is difficult to conceive a more illustrative case. Everything here turned obviously on ocular inspection. It was the eye, and the eye alone, that could decide whether the sinister look of the articles proved them to be the implements

of a forger. But the Sudder Court, with the usual Indian confidence in paper descriptions, decided, and most naturally, that the proof was insufficient.

These are extreme cases; but every system must be tested by extreme cases. I do not, however, wish to make any stronger assertion than this—that here we greatly underrate the natural advantages of Courts of first instance, and set far too high a value on the corrective power of Courts of Appeal. It is no answer to me to say that our Judges of first instance are negligent and incompetent; that, even under the check of appeal, they take down the evidence imperfectly, and that it would never do to trust them to form irreversible conclusions on questions of fact. All that may, unhappily, be too true; but my doubts attach to the Court of Appeal. I doubt whether, under the existing conditions of the human mind, it is possible successfully to set right, more than to a very limited extent, the mistakes committed in a Court of first instance. In reading a great Indian case (we sometimes see them at home in the records of the Privy Council, and I admit that I speak of a time before the worst extravagancies of appeal were pruned away), it has often struck me when I have seen the Zillah Judge starting some ingenious theory over the head of the Principal Sudder Ameen, and the Sudder Court showing itself still more ingenious than the Zillah Judge, and the Privy Council (though it did not often sin in that way) perhaps showing itself more ingenious than all—it has often struck me, I say, that the process might after all be like a long mathematical problem, in which, if you make a mistake in the first stage, the error only becomes worse, and vitiates the conclusion more hopelessly in proportion as the calculation mounts higher up and becomes more intricate.

But while I lay down theoretically that Courts of first instance possess advantages which no Courts of Appeal enjoy, my practical conclusion is a very simple one. It is this: improve your Courts of first instance, and, to the extent of your judicial material, establish these Courts of Small Causes. It will be seen why I object to inferior Courts of Small Causes. An inferior Court of this kind is not only a waste of public money and an injury to the litigants, but a standing sin against principle. The proper course is to improve your Judge till you can save the appeal. Very moderate improvement is, however, sufficient. So great are the natural advantages possessed by Courts of first instance, that a moderate elevation of the standard of capacity goes a long way. Fair legal knowledge, honesty, good sense, and familiarity with the language and customs of the people will suffice.

Two points remain to be noted. It may be said to me—granting all you say as to questions of fact, why not give an appeal on points of law? Now,

I have no objection on principle to the form of appeal known as special appeal. But the difficulty is, to whom shall the appeal lie? You cannot send the litigants in these small cases hundreds of miles to the Sudder Court; and if we did give such power of appeal we may be sure that it would be frightfully abused. And then as to the Zillah Judge. Without meaning the smallest disrespect to the Zillah Judges, I must say that, if the Small Cause Courts were properly organized (I admit the condition is all-important), there would be no such superiority in the Zillah Judge as would warrant an appeal of right being given to him from the Small Cause Court Judge on the simple points of law which arise, and that rarely, in the Small Cause Courts. The existing system of allowing the Judge to state a case for the Sudder Court at his own pleasure seems infinitely the best; and the more you improve the capacity of your Judges, the more freely, you may be sure, will they state cases on questions on which there may be genuine cause for doubt.

I must not conclude without making the admission that appeals have one indirect advantage, that they do serve as a mode of supervision. Whether it be true or not, that the Court of appeal can correct the mistakes of the Court below, it is an important consideration that the Judge below thinks it can; and under this impression, a negligent Judge may do his work better. I think it very desirable that Small Cause Courts should be under supervision; but for the best mode of supervision appears to me to be the bringing of a second mind to bear on the business of the Court. I therefore attach very high importance to the provisions of the Bill for the appointment of Judges extraordinary. Under these provisions, the Local Government may invest any judicial Officer or person of legal learning with the power of assisting, occasionally or periodically, in the conduct of the jurisdiction of a Small Cause Court. Ordinarily, the person so empowered will doubtless be the Zillah Judge; but in the vicinity of the Presidency towns, I am not without hope that he may be a member of the Presidency Bar, if we can find one who can spare the time, and is reasonably well acquainted with the language. The report of such a Judge extraordinary, on the manner in which the business of the Court is conducted, will carry with it a supervision not less effective and more consistent with principle than any appeal whatsoever."

The Hon'ble Mr. Harington said that his hon'ble colleague Mr. Maine, to whose very able speech they must all have listened with much pleasure, had done him the honour of coupling his name with the institution of Courts of Small Causes in this country beyond the limits of the Presidency Towns, and he begged to thank his hon'ble colleague for the flattering terms in which he had spoken of his exertions in connection with the establishment of those Courts.

It would be an affectation of modesty on his part were he to disclaim all merit in the matter, but any credit which attached to him for anything that he might have done in the way of establishing Courts of Small Causes in the interior of the country was at least equally due to the able men who had taken part with him in passing the Act under which the existing Courts were held. He need scarcely remark that there was nothing original in the measures adopted by them. Courts of Small Causes had existed for years previously at home and in the Presidency towns of India, and had been found to work most satisfactorily. The work of the Indian Legislature was confined to adapting the system of Small Cause Courts to the circumstances of this country, and to reconciling the natives of India to the procedure which gave the presiding Judges a final jurisdiction, and allowed of no appeal from their decisions. The establishment of Courts of Small Causes in the Mofussil was a great and, in some respects, no doubt a hazardous experiment. The Courts in the Mofussil being far from popular, by taking away the right of appeal to which the Natives were greatly attached, they ran the risk of rendering the Courts still more unpopular. He was happy to say that wherever the experiment of Small Cause Courts had been properly and fairly tried, it had been remarkably successful. He might state, indeed, that it had succeeded to a degree far beyond what the promoters of the system could have expected. He had lately seen a communication from the Lieutenant-Governor of the North-Western Provinces, in which he said "the reports of the Judges who have presided in the Small Cause Courts in these Provinces lead to the belief that they tend to check extravagance, to induce the punctual fulfilment of pecuniary obligations"—that was, to make men more honest—"and to reduce litigation." He recollected similar remarks being made some time ago in respect to the Small Cause Court at Kárachi. He thought it was scarcely possible to bestow higher praise upon any Courts. The Government of the Punjab reported that the Courts had been freely resorted to, and that the procedure was prompt and final; and from Bengal they were told that the usefulness of the Small Cause Courts had been gradually more and more apparent in proportion to the length of time over which their operations had extended. He considered this to be very satisfactory as showing that the Courts were growing in public estimation. He had remarked that the system of Small Cause Courts had succeeded wherever it had been properly and fairly tried. What he meant was that, when the Judges of the Small Cause Courts could give their whole time to the work coming before them and had no other duties to perform, the system had been properly tried; but that when the Small Cause Court Judge was also a Principal Sudder Ameen, and was invested with ordinary as well as Small Cause Court jurisdiction, the system could not be said to have had a fair trial. Mr. Maine's remarks upon this point, in which as well.

as in his speech generally, he (Mr. Harington) entirely concurred, referred, as he understood them, rather to Madras than to Bengal. In Bengal no Judge exercising ordinary jurisdiction had been invested with Small Cause jurisdiction, though Small Cause Court Judges had been invested with the powers of a Principal Sudder Ameen. This he could not but regard as a mistake. He also thought that what had been lately done at Madras was open to objection. It was essential to the success of Small Cause Courts that there should be only a brief interval between the date of the institution and the date of the decision of a suit, and that on the day fixed for the attendance of the witnesses and the hearing of the suit, ordinarily, the witnesses should be examined and allowed to return to their homes, and the suit decided.

This could generally be done with proper management when the Judge of the Court was only a Small Cause Court Judge, but if the Judge of a Court of Small Causes was also a Principal Sudder Ameen or a Moonsiff, or had some other work to do, he could never command his time, and either the work coming before him as a Small Cause Court Judge, or the other business to which he had to attend must suffer; both could not be properly performed. A suit had lately been decided in the High Court of Judicature at Calcutta, which occupied the Judge who presided at the hearing no less than nine days. The case was not one of any importance. If such a suit were to come before a Small Cause Court Judge in the exercise of his powers as a Principal Sudder Ameen, hon'ble Members would understand what serious interruption it would cause on the Small Cause Court side of the same Judge's Court, and how great would be the inconvenience which the parties and witnesses on that side of the Court would suffer. Referring again to the report of the Lieutenant-Governor of the North-Western Provinces, he found that the average duration of suits in the Court of Small Causes at Benares was only 8 days, and in that of the Small Cause Court at Allahabad, only 5¼ days. These Courts were properly constituted, that was to say, the Judges had no other duties to perform. Thus it was that they had been able to attain these short averages. Respecting the difficulty noticed by Mr. Maine of providing sufficient work for Judges of Courts of Small Causes, which was found to exist in some parts of Bengal, and which had prevented the extension of the system, he might mention that it was at first contemplated that Courts of Small Causes should be established only in large cities and towns where there would be ample work for them. The law did not contain any limitation to that effect, and Courts had, he believed, been established in some agricultural Districts where the number of suits was not sufficient to occupy the time of the Judges. Mr. Maine's Bill would prove a remedy for this state of things, and remove the difficulty to which he had referred. The Bill admitted of the enlargement of the territorial jurisdiction

of the Courts constituted under it to any extent. Courts would be established at convenient distances from one another. To these Courts, Registrars would be appointed, who would receive and register plaints and perform other duties including the decision of cases of small amount, when the Registrar was considered qualified for this duty; and the Judge would visit each of the Courts, so established, in turn and decide the cases which he found ready for hearing. He regarded this as a great improvement, and he had no doubt it would prove a most useful provision. On his return from England a short time ago, he had the good fortune to have as a fellow passenger on board the Steamer, the Hon'ble Mr. Adams, the learned Chief Justice of the principal Court of Judicature at Hong Kong. Mr. Adams, hearing that he (Mr. Harington) was engaged in revising the Indian Code of Civil Procedure asked to be allowed to see it. On returning the Code, Mr. Adams remarked that what had struck him most in the Code was the number of appeals which it allowed. He gave Mr. Adams the same explanation, that their hon'ble colleague had given them to-day. He mentioned that they could not trust the great majority of the Courts of first instance with a final jurisdiction in any cases, and that to preserve regularity and prevent injustice being done, they were compelled to allow an appeal from almost every order and decision. Mr. Adams very justly remarked that the proper remedy for this state of things was not to multiply appeals, but to improve the Courts of first instance. This was what Mr. Maine's Bill proposed to do. When fully introduced by the establishment throughout the country of Courts such as were contemplated, the Bill would affect or cover no less than about four-fifths of the entire litigation of the country. He need say no more to show the great importance and value of the Bill. Of course the success of the Bill would depend in a very great measure upon the character of the Judges presiding in the Courts to be constituted under it. To secure competent Judges adequate or liberal salaries must be given. These he was sure would not be begrudged by the Government. He believed it would be a true economy to establish, under competent and well paid Judges, Courts having a final jurisdiction, for the trial of cases of a simple character and not very large amount, as proposed in Mr. Maine's Bill, that was, Courts from whose decisions there would be no appeal, and in which ordinarily a single trial would be allowed. These Courts, however liberal, within any reasonable limits, the salaries of the Judges might be, would be infinitely cheaper than classes of Courts for the decision of the same cases, the principal duty of the superior Court being to discover whether there was not something wrong in the decision of the Courts next below them, and he thought that their decisions would give more satisfaction. He felt sure that, after a very short time, the Courts established under Mr. Maine's Bill would become amongst

the most popular Courts in the Country. He quite agreed with Mr. Maine in what he had said as to the unsatisfactory nature generally of decisions passed in appeal on questions of fact the right decision of which rested entirely upon oral testimony given in another Court.

The Motion was put and agreed to.

CIVIL COURTS (CENTRAL PROVINCES) BILL.

The Hon'ble Mr. Harington, in moving for leave to introduce a Bill to define the Jurisdiction of the Courts of Civil Judicature in the Central Provinces, said that the jurisdiction which was now exercised by the Civil Courts in the Central Provinces was derived, not from any express provision of law, but from orders passed from time to time by the Executive Government. These orders bearing a date prior to the passing of the Indian Councils' Act, 1861, their validity, and the proceedings of the Courts established by them, could not be called in question; but it was felt that the constitution of the Civil Courts in the Central Provinces was not so satisfactory as could be desired; and the Chief Commissioner having come up with a request that the Government of India would be pleased to confer Civil jurisdiction in suits of a small amount upon a class of Officers who had not hitherto exercised any of the functions of a Civil Judge, which could not be done without a law, it seemed desirable that, instead of confining the scope of any Bill introduced to this single object, the opportunity should be taken to place the Civil Courts generally of the Central Provinces on a similar legal basis to that upon which the Courts in British Burmah had been placed by Act I of 1863, and to give them a similar legal status. This was the object of the Bill which he had asked for leave to introduce. The Bill followed the form of the British Burmah Act in so far as it defined the jurisdiction of the Courts to which it referred.

The Motion was put and agreed to.

CHIEF COURT (PUNJAB) BILL.

The Hon'ble Mr. Cust introduced the Bill to amend the constitution of the chief Court of Judicature in the Punjab and its Dependencies, and moved that it be referred to a Select Committee, with instructions to report in six weeks. He said that in moving for leave to introduce the Bill, he had mentioned that the new Court would have an ordinary and extraordinary jurisdiction: the Bill had been carefully drawn with the aid of his hon'ble friend Mr. Harington so as to provide for all requirements; and with regard to the ordinary jurisdiction, there was little to add beyond this, that the new Court would consist of two Judges, one of whom would be a Barrister, and would be the Court of final Appeal; the

ference and Revision in the Province. All special or second appeals, which could only be on points of law, would be heard by this Court alone, and the final appeal in all cases affecting land would be heard by this Court, except in those districts where a settlement of land revenue was actually in progress, in which case the appeal would lie to the Financial Commissioner. These were two great changes, and, in his opinion, great improvements on the present Punjab practice.

But he would call more particularly the attention of the Council to the extraordinary jurisdiction of the new Court over European British subjects in criminal trials. This was a great innovation on existing practice, but the necessity of it had been forced upon the Government by the unsatisfactory state of affairs. For many years it had been a standing reproach that there was no machinery nearer than a thousand miles, for punishing theft or any serious crime against life and property, if the offender were an European British subject. Every person acquainted with the North of India must recollect cases in which justice had been denied, or had miscarried, or had been satisfied at such an expenditure of money, and inconvenience, and health, as to render the remedy worse than the disease. It had been asserted that there was an impunity of European crime. This was not entirely the case: the Government always prosecuted in cases of murder and offences against Commerce, such as forgery; and in the last Session of the High Court, a man who stole a bag of 300 Rupees at Lahore, was sentenced to two years' imprisonment. Five European witnesses, including the Chief Police Officer of the city of Lahore, and the Landlord of the Chief Hotel, had to accompany the thief by dawk carriage and train to Calcutta. That bag of 300 Rupees would have cost the Government many thousands. Indeed, it was expected that the saving of the expense of sending parties to Calcutta would go far to meet the increased expenditure of the new Court.

In this case a conviction was secured, and the money was well spent to get the ill-conditioned thief out of the Province. But had the witnesses been Natives, had the season of the year been less favourable, it is probable that some of them would have sickened or died on the road, or sent substitutes, or their dialect would not have been understood, and a Calcutta Jury would have returned a verdict of acquittal.

And even where a conviction is secured, the moral effect is entirely lost, when the punishment is inflicted so far from the scene of the offence. A case happened two years ago, when a man named Rudd killed a Native in the Hazára hills on the banks of the Indus: he was tried at Calcutta, but it was doubtful whether the news of the righteous and severe sentence of the Judge ever reached the scene of his crime. All that the villagers probably knew was, that one of their

number was killed by a Sáhib, and as punishment to them, other members of their community were carried off 1,500 miles to Calcutta under charge of the Police.

This Bill provided for trial by Jury, but not for a Grand Jury. Whatever might be the merits of demerits or that venerable institution, there was no possibility of transplanting it to the Punjab. There was no material of which it could be constituted. On the other hand, the petty Jury was strengthened by the provision that no Military officer was to be exempted as such from attending upon it. Trials must always take place at Lahore, Delhi, or Umballa, or some large Station where there would always be abundance of intelligent and independent British Officers, quite unconnected with the Civil Government, and familiar with Courts Martial; and if it were desired that the verdict of the Jury should be unanimous, this could be amended in Committee, and he (Mr. Cust) would have no objection to offer to such amendment. The attention of the Local Government had also been directed to the necessity of providing proper prisons for the detention of Europeans before trial, or after sentence. Under the present system of Jail management in the Punjab, there was no fear of there being any unnecessary suffering on this account: indeed the Government was bound to prevent the possibility of anything of the kind: all Jails were daily visited by a European Medical Officer.

Such then was the nature of the Bill which he (Mr Cust) submitted to the Council: he did not anticipate that better justice in any material point would be secured than was already supplied by the old Court; but he admitted that in the new Court there would be a greater respect to form and legal traditions which, rightly or wrongly, were prized.

The Hon'ble Mr. Bullen said that he did not oppose the Bill going to a Committee. So far as regarded the trial of European British subjects charged with the commission of Criminal offences in the Mofussil, every one would admit that some change was necessary. But if such change was made, no safeguard which the accused had previously should be withdrawn. In the opinion of a large section of the community one of those safeguards was the Grand Jury. He wished to be understood as not expressing any opinion of his own as to the practicability of extending the Grand Jury system to the Mofussil; but many persons of experience and knowledge of the country thought there would be no difficulty in so extending it. Speaking, therefore, their opinion, rather than his own, he would ask that the question of the feasibility and the expediency of extending Grand Juries to the Mofussil should be thoroughly examined in Committee.

He had intended to object to Section 23 of the Bill, which dispensed with the unanimity hitherto considered essential to the validity of a verdict; but as the Hon'ble Mover had declared that he would have no objection to amending the Bill in that respect, he (Mr. Bullen) would make no further observations on the subject.

One other point appeared to require notice. The Bill as it stood contained no provision that a certain portion of the Jury trying a European British subject should be British-born. He (Mr. Bullen) trusted that a clause would be introduced supplying this deficiency, and would suggest that in all such cases one-half at least of the Jury should be British-born. Subject to these observations, he had no objection to the Bill being referred to a Committee.

The Hon'ble Sir Charles Trevelyan expressed the great satisfaction with which he viewed the introduction of this Bill. Early in his public service in India, a case arose which impressed him with the defective condition of the law requiring European British subjects to be sent for trial to the Presidency town. The accused in the case referred to had to be sent with a guard of soldiers and the prosecutor and witnesses—fourteen British subjects in all, with the Brigadier at their head—from Delhi to Calcutta, involving an absence of several months. The chief burden in this case fell upon the Government. For the persons sent were all public servants, and continued to draw their pay during their absence. The public not only lost their services during that long period; but the expenses were extremely heavy, according to his recollection, about 30,000 rupees. But what would have been the case had the fourteen persons been merchants, planters, or persons connected with the important trade which has arisen out of the business of the great Military and Hill Stations and the Transit and Railway Companies? How grievous would have been the burden on persons of that class who depended for their success in life on the constant application of their time to their private affairs. Such a state of the law was entirely incompatible with that free settlement of Europeans in the interior of India which it was so desirable to encourage. It was also incompatible with the proper administration of justice. Under such a state of things, there must be impunity to the wrong-doer, and denial of justice to the wronged, except in extreme cases where, at all hazards, and at any expense, the offender must be reached and punished. Consider what is meant by impunity to the wrong-doer and denial of justice to the wronged. It means a general relaxation of moral principles in a certain class, and a general inducement to crime and disposition to lawlessness. The securities which the Bill provided for the fair trial of European British subjects were very satisfactory. Objections used to be made to Mofussil Courts and Mofussil Law—that was, to the Criminal Law founded on the Muham-

madan Law. Now, thank God, we had one of the best Criminal Codes which the world had seen, and which was equally applicable to the whole of British India, including the Presidency Towns. We had also the Codes of Civil and Criminal Procedure, and we should soon have a substantive body of Civil Law. Then the Bill provided for the appointment of a Barrister Judge and the empanelling of the best Jury which the neighbourhood could afford; and, although the persons available for Juries were limited in number, yet they were excellent of their kind, and a person on trial for his life could not place greater confidence in any Jury than one composed, in any of the great Mofussil towns in India, of persons engaged in mercantile pursuits joined with the Civil and Military Officers of Her Majesty.

The Bill also provided, although not directly, yet as a necessary consequence of the other measure, for an independent Bar, deriving its tone and spirit from the Bar of England. Those who know how necessary a Bar is, not only for the elucidation of truth, but also for assisting and correcting the Judge and holding the prosecutor in check, must regard with great satisfaction the increased disposition which has been shown by our young English Barristers to resort to this country. Within the last few months many young Barristers of high character and sound legal training had arrived from England; and he, Sir Charles Trevelyan, did not doubt that, for years to come, the country would derive great benefits from their labours, and that they would, as the just reward of the exercise of their abilities and learning, attain to high distinction. Altogether he considered this Bill constituted a new era in our Indian legal system, a fresh starting-point, and the commencement of an arrangement by which new centres would be established in various parts of the interior, whence would be diffused the liberality, and the love of justice and independence which had distinguished the late Supreme, and present High Courts, and which the rulers of India for their own sake and for that of the people under their charge, would fain see more generally prevalent.

The Hon'ble Mr. Maine said.—"I think that my hon'ble friend Mr. Bullen has done well to reserve his final determination as to Grand Juries until the time when the Bill providing formally for their abolition comes again before the Council. I am well aware that when the measure was before under our consideration, he had doubts as to its expediency. But he knew that there were difficulties in extending the system of Grand Juries to the Mofussil, and with that fairness and moderation which have always characterised the non-official Members in their relations with the Council, he was willing that those difficulties should be sifted in Committee before he finally made up his mind. I am bound to make the same statement on behalf of our late colleague Mr. Claud Brown. To the regret which we must all feel for the retirement of a col-

league who gave us most useful assistance in Committee and elsewhere, I am desirous of adding the expression of a regret peculiar to myself. My hon'ble friend, like half (or probably more than half) the socalled Englishmen in India, is in point of fact a Scotchman, and intends, I believe, to settle in his native country. I am sorry to say that when he gets there he will find that, except for one crime which my hon'ble friend is not likely to commit, and which was brought under English legislation shortly after the Union, there is not, and there never was, a Grand Jury in Scotland.

I am glad to see that my hon'ble friend Mr. Cust has adopted the jury-rules suggested by the Royal Commissioners, rather than those of the Code of Criminal Procedure. I have never thought that the jury Sections of the Code possessed all the value that belongs to the rest of that excellent body of law. I should say that the framers of the Code had either an exaggerated estimate of the difficulty of obtaining unanimity among jurors, or else that they under-valued the rule of unanimity itself. Now so highly do I prize that rule, and so much do I think that it has been misunderstood by those who object to it, that I can scarcely consent to even the slight modification of it proposed by my hon'ble friend. I am aware, however, that we are limited by the scantiness of our material for juries. A jury which will not agree must be discharged, and the accused person retried. We cannot go on empanelling a series of juries, and in this climate we cannot keep persons charged with offences, but who may possibly be innocent of them, for a prolonged period in jail. The point, however, should be fairly considered.

With regard to the observation which fell from Mr. Bullen, that it seemed doubtful on the face of the Bill whether the majority of the petty jury were to be Europeans, I do not know what reason my hon'ble friend Mr. Cust had for drawing the Bill in this form; but, I presume, he supposed that the provision in question would follow from the Code of Criminal Procedure which would govern the trial subject to these rules. The matter should, however, be made clear. There is no doubt the law should be in conformity with Mr. Bullen's wishes.

I need not say that I fully approve of the measure, which, indeed, is a fragment of the general Government plan. It will abate the scandal of the nearly absolute immunity of certain classes from punishment, and put an end to the deportation of innocent persons to Calcutta on suspicion of having testimony to give. It will give the British-born subject a mode of trial which involves the very minimum of departure from the existing system. It gives him a unanimous or nearly unanimous jury, and a Judge professionally educated to assist the jurors in applying the rules of evidence; and by joining the new

Criminal jurisdiction to the Civil jurisdiction of a great Court of Appeal; it provides, so far as legislation can provide, the services of an efficient Bar."

The Hon'ble Mr. Harington said he believed that Sir Charles Trevelyan had not in any degree over-rated the importance of the Bill which had just been introduced, particularly of that part which proposed to relieve the High Court at Calcutta from the Criminal jurisdiction which it now exercised in respect of the trial of offences committed by European British subjects in the Punjab and its Dependencies, and to constitute a local Court, one of the Judges of which should always be a Barrister of not less than five years' standing, for the trial of such offences. It must not be supposed that this was the first time that the legislation of this Council had taken the direction of that part of the Bill to which he had particularly referred, though previous laws had not gone so far in that direction as the present Bill proposed to go. In 1862 the Council had passed an Act authorizing the Government of India to constitute a Recorder's Court in the principal towns of British Burmah, namely, Akyab, Rangoon, and Moulmein. The Act gave power to the Recorder to try European British subjects for all offences, other than capital, committed in British Burmah. It made the Code of Criminal Procedure applicable to the preliminary investigation and trials held under the Act, and required that the commitment should be direct from the Magistrate to the Recorder's Court, without the intervention of any other agency. Recorder's Courts had been established at Rangoon and Moulmein, and the Court at Rangoon had been in existence for more than a year. It was to be presumed that during this period some trials of European British subjects had taken place under the Act; and they had no reason to believe that any injustice had been committed, any hardship felt, or any inconvenience experienced in consequence of the form of procedure prescribed by the Act. Last year the Council passed an Act to regulate the administration of Civil and Criminal justice at Aden. This Act also empowered the Resident to try European British subjects charged with offences other than capital committed within the limits of his jurisdiction, and required that the commitment should be made by the Magistrate direct to the Resident. There were thus already two places beyond the local limits of the High Courts of Judicature at Calcutta, Madras and Bombay, in which European British subjects could be tried by the Local Courts for offences other than capital; and, so far as they knew, the experiment (for such it might be regarded) had been successful. The present Bill, as already noticed, went beyond the British Burmah Recorder's Act and the Aden Act, in that it proposed that the Court to be constituted under its provisions should have power to try European British subjects for all offences, whether capital or otherwise; and he thought that the success which had attended the experiment at Ran-

goon, as well as other considerations, justified this extension of the law. Another point of difference between the present Bill and the Acts previously passed was as to the proceeding to be followed on the delivery of the verdict of the Jury when the Jury were not unanimous. This part of the present Bill had been referred to both by Mr. Bullen and Mr. Maine. Under the Criminal Procedure Code, as applicable to the Recorder's Courts in Burmah and to the Resident's Court at Aden, if a certain number of the jurors could not be brought to agree in a verdict of guilty, the accused person was liable to be tried over again. He thought this was a great hardship. The present Bill, as noticed by Mr. Maine, adopted the provision of the Code prepared by the Royal Commissioners, and enacted that a majority of not less than two-thirds, with the concurrence of the Judge, should be sufficient for a verdict of guilty. This seemed to him to be a very proper provision, and he did not think that any reasonable objection could be made to it. He was aware that many persons, whose opinions were entitled to much respect, thought the old rule as to unanimity should be maintained. This was a point which could be better considered in Committee than at the present stage of the Bill. He wished to say a few words on the subject of the trial of European British subjects for offences committed in the Mofussil. There seemed to be a general concurrence of opinion that the present system under which European British subjects committing offences beyond the limits of the Presidency Towns must be brought for trial, accompanied by the prosecutors and witnesses, before the High Court, however remote the locality of the crime, could no longer be maintained; and that the time had arrived when the interests of justice and the safety of the public required that the law should be altered. Taking for granted, then, the necessity of a change of the law, he readily admitted that in creating new tribunals for the trial in the Mofussil of offences when committed by European British subjects, it behoved the Government to take care that the Courts were presided over by duly qualified Judges, that the procedure should be reasonable, and that under it the accused should have a fair and impartial trial, and be afforded every proper and legitimate chance of escape. He could not agree with those who thought that Courts hitherto considered good enough for the trial of Natives for criminal offences must be considered good enough for the trial of European British subjects also. He believed that the existing Mofussil Courts were as good as the means at their disposal had enabled the Government to make them. But it could not be denied that they stood in need of reform, and so long as he had the honour of being a member of the Government, he should be prepared cordially to support any measure for their improvement. But whatever might be the character of the Courts in the Mofussil, there could be no doubt that

European British subjects, charged with crimes, had been accustomed to be tried by very superior tribunals. At home, in the Colonies, and in India, they had a right to be tried by Judges trained to the law. Naturally they highly prized this right, and he did not think they could be deprived of it. They might expect the European British subjects in India to make certain concessions or sacrifices, rendered necessary by the circumstances of the country, but he did not think they could be expected to give up the right of trial by Judges qualified in the manner stated. In this respect the Bill introduced by Mr. Cust furnished no ground of complaint. It provided that one, at least, of the Judges of the Court to be constituted under the Bill should always be a trained lawyer. No doubt the Bill made no provision for any investigation before a Grand Jury between commitment and trial. The reason was that in many places where trials would be held, it would be quite impossible to get an efficient Grand Jury and an efficient Petty Jury likewise, deserving of confidence; and as the Petty Jury could not be dispensed with; the only alternative was to dispense with the Grand Jury. This was what was proposed by the Royal Commissioners. In their remarks on the Section of the Code for abolishing Grand Juries they observed—

"The provisions prepared by us on the subject of juries commence with a rule to the effect that Grand Juries shall be abolished. This institution has never existed in India out of the Presidency towns, is not adapted to the country, and as coming between the Magistrate and the Session Judge, so as to control in any way the proceedings of the former, would not be understood or appreciated by the great mass of the community. The retention of the Grand Jury in Calcutta would involve a very wide and as we think an unnecessary diversity from the practice of the Mofussil in the mode of dealing with criminal charges."

On this Commission were Sir John Romilly, the Master of the Rolls, the late Sir John Jervis, Chief Justice of the Court of Common Pleas, Sir Edward Ryan, for many years the respected Chief Justice of Bengal, Mr. Cameron, a Member of the Indian Law Commission and formerly a Member of the Council of the Governor-General of India, and Mr. Lowe, whose legal and other attainments were well known. He could not believe that these eminent lawyers would have proposed the abolition of the Grand Jury if it would endanger the liberty of the subject in times of political excitement, or if the interests of justice were likely to suffer by the abolition. He supported Mr. Maine's Bill for the abolition of Grand Juries very much on the ground upon which the Royal Commissioners had proposed that measure, and not for any supposed delinquencies on the part of Grand Juries in India. That the Grand Jury had occasionally made mistakes was probable. But reviewing their conduct for a long series of years, he considered that they were entitled to the acknowledgments of the Government and the community for the time and labour which they had

devoted to the performance of their duties. He had had no practical acquaintance with the working of the Grand Jury system, and any opinion therefore that he could give as to its utility or otherwise could carry with it no weight. But having very recently read the Report of the English Law Commissioners on trial by Jury generally, he was greatly struck by their remarks on Grand Juries, as showing how much might be said in opposition to the views entertained by many persons as to the necessity of maintaining the institution for the protection of innocent persons accused of offences, and to prevent their being subjected to the disgrace of a criminal trial. These views had recently been expressed with remarkable moderation and fairness, and he felt sure that the representations about to be made to the Council on the subject would be regarded as entitled to full and careful consideration. With the permission of the Council he would read the remarks to which he had just referred, first observing that the conclusions of the Commissioners had been arrived at after the examination of a large number of persons as to the utility of Grand Juries and as to the necessity of their retention. The Criminal Law Commissioners said—

"The utility of Grand Juries has usually been rested on the position, that it is an impediment to frivolous or malicious accusations. In ordinary practice it can seldom have this effect until the accused has undergone every hardship preliminary to taking his trial. And as the investigation is taken in his absence, and therefore the witnesses for the prosecution cannot be properly cross-examined nor exculpatory defences suggested, as the Judge is not present to superintend the legality of the evidence, and as the witnesses do not speak under the salutary impression of the presence of the public, nor, indeed, under any apprehension of the penalties of perjury, the impediment of a Grand Jury to frivolous or malicious accusations is very slender indeed. On the other hand the dismissal of an accusation by a secret and irresponsible tribunal can contribute very imperfectly to allay suspicions of guilt, or to satisfy the public mind that justice has been allowed to follow in its legitimate course. Added to which, the inconveniences and expense incurred by jurymen, prosecutors, and witnesses; the delay of judicial proceedings, and that scandal to the English law of the Criminal Procedure, the flaws detected in indictments, arising out of the defective means of judicial investigation possessed by Grand Juries, all make it obvious that any advantages derivable from the institution of Grand Juries are not without a great alloy of very serious mischiefs. If it be thought that in some cases it is important to shield an accused with the double protection of a Grand and Petit Jury, it is conceived that at all events a Grand Jury may be safely dispensed with in all cases of commitments by Stipendiary Magistrates, being Barristers-at-law, for all offences other than those contained in the Chapter of the Act of Crimes and Punishments, which relates to treason and other offences against the State."

He thought he should not be over-rating the Magistrates in the Mofussil or others empowered to commit European British subjects for trial, who performed their duties under the close supervision of the Sessions Judges and High

Courts, in placing them on the same footing as the Stipendiary Magistrates referred to in the remarks which he had just read. He would only add that accused persons might always be defended by Counsel before the committing officer, which would of course be a great protection to them.

The Hon'ble Sir Robert Napier said that opinions were unanimous as to the necessity of competent Courts in Provinces which were remote from the Presidency towns. But as there was some difference of opinion as to the mode in which such Courts should be established, he thought it right to state to the Council the reasons which induced him to support the Bill. Many imaginary cases had been put forward of probable inconvenience and hardship which might be occasioned to a European by the want of a Grand Jury, and he thought it not irrelevant to mention a real case which occurred within his own knowledge several years ago, in which a failure of justice took place from the want of a proper criminal Court in the Mofussil. A European was charged with murdering his sister-in-law ; and, on the evidence of his wife and bearers, was committed by a Mofussil Magistrate and sent up to Calcutta. On the way, the wife was induced to retract her testimony against her husband and the bearers absconded. The consequence was, that on his arrival at Calcutta, when he was put on his trial, there being no evidence against him, he was acquitted, and the Magistrate was severely censured by the Supreme Court. He (Sir Robert Napier) had no doubt that the man committed the murder, and yet he escaped unpunished. But whether he was guilty or innocent, the evil was equal : if innocent, he was dragged twelve hundred miles for trial : if guilty, he was acquitted owing to circumstances which would probably never have occurred had the trial been held near the scene of the murder. This was only one of the many instances in which justice had been defeated by the want of a proper tribunal in the Mofussil for the trial of European Criminals.

He should cordially support the Bill of his hon'ble friend provided it involved the unanimous verdict of the jury. He had no doubt the Executive Government would provide proper prisons in the Punjab for the custody of European criminals ; and whether the Bill which had been introduced by Mr. Maine, for the abolition of Grand Juries, became law or not, he should cordially support the Bill of his hon'ble friend (Mr. Cust,) under the condition he had mentioned.

The Hon'ble Mr. Anderson said :—" I did not intend to have addressed the Council on this occasion, but I cannot refrain from expressing my entire concurrence with what has fallen from Sir Charles Trevelyan as to the benefits which will accrue to this country from the establishment of Courts in various centres similar

to the one which is proposed in the present Bill for the Punjab. I trust that, at no distant time, I shall receive authority to introduce a Bill of the same character for the improvement of the administration of Civil and Criminal justice in the Province of Scinde, subordinate to the Government of Bombay. As the question of the abolition of Grand Juries has also been incidentally raised, I feel it my duty to state that I entirely concur in what was advanced by my hon'ble friend Mr. Maine, on the present and on a former occasion, and that I am utterly unable to see, in what has been advanced on the other side, more than one single argument. Had my objection to Grand Juries rested on purely theoretical grounds, or even on practical grounds of no very great importance, I should, for my own part, have been willing to defer to any marked expression of public opinion, even though I thought that opinion erroneous. But I am constrained to say that the consideration which has had great weight with me, and has for many years influenced my views, for I have had frequent opportunities, as Secretary to the Government of Bombay in the Judicial Department, of watching the system, is the absolute necessity which exists for the improvement of the Petty Juries. I have no right to offer an opinion as to the system in Calcutta, but I must plainly state that the verdicts of Petty Juries in Bombay have, in many instances for many years, been simply scandalous. I do not impute to the members of those Juries any thing like vulgar corruption or crass stupidity; but I do impute to them the absence of that higher intelligence which can discriminate between facts as they really stand upon the evidence, and facts as discoloured by forensic fustian. I do impute to them an exaggerated sympathy for prisoners. I do impute to them a kind of bastard sentiment of miscalled independence, which leads them to imagine that the acquittal of a prisoner inflicts some sort of discomfiture on the Government. Holding this strong opinion, which I shall be prepared to support, if necessary, by adequate evidence, I cannot hesitate to accord my humble support to any measure which will remove the monstrous evil of the incapacity of Petty Juries, by utilizing, for the ends of public justice, the admirable material which is now squandered on the effete institution of Grand Juries. In favour of the Grand Jury system, I can recognize but one argument, viz., that it may sometimes prevent an innocent man from being placed on his trial. But I would remark that Grand Juries seldom in practice ignore bills in cases to which their special attention has not been directed by the presiding Judge, and that if they do ignore bills in such cases, they will generally have exceeded their just authority. All that a humane man can desire, for the purposes of saving an innocent person from the disgrace of a public trial, will be better secured if the authority be vested in the Judge which is now entrusted to the Grand Jury. The institution must in all judicial reasoning be open to the objection that it places

an authority of less intelligence and experience in a particular duty, in appeal over an authority of greater intelligence and experience. For to say that the Magistrate, be he a Mofussil or a Presidency Magistrate, whose daily duty it is to sift and to weigh the value of judicial evidence, is not a superior authority *quoad* that duty, to the members of a Grand Jury, is to say that he is an anomaly which has no parallel in the book of human experience. I do not wish on the present occasion to discuss the question at any length. I will therefore only briefly state that every jurist of high reputation who has discussed the subject, from Jeremy Bentham to Fitzjames Stephen, has pronounced against Grand Juries. The latter gentleman, who has given us the latest expression of educated thought on the subject, states that the institution is one which no one would wish to retain were it not for certain social advantages, which are derived from the connection of the class from which Grand Juries are taken, with the administration of justice. It is because I wish in India to give the Grand Jury class a real and general connection with the administration of justice that I shall give my best support to the present Bill and to the Bill which was recently introduced by my honourable friend Mr. Maine.

There is one other point in connection with the present Bill to which I wish to advert. It is the one to which allusion has been made by the hon'ble Mr. Bullen and Sir Robert Napier. These gentlemen wish that the verdicts of juries constituted by this Bill should be unanimous. My honourable friend, the Mover, has expressed his willingness to assent to this modification of the measure. I confess that I do not share in this anxiety for unanimity. I prefer the practice of the Scotch Law, which is content with the verdict of a large majority. I am much inclined to take Bentham's view, that to demand unanimity is to enforce perjury by means of torture: certainly such a demand is to induce a man by the infliction of physical inconvenience to sacrifice his mental convictions. I cannot forget that on a day, when the liberties of England were at stake, the day of the trial of the seven Bishops, the cause of all right was imperilled by the fact that Arnold, the King's brewer, was on the jury. He retarded the acquittal of the Bishops for a whole night, and might have worn out his brother Jurymen but for the statement of one, the largest and strongest of the twelve, that he would remain there until he was as thin as a tobacco-pipe before he would consent to a verdict of guilty. It is not pleasant to think what might have been the verdict had the brewer been the largest and strongest man. A system which subordinates the intellect to mere physical endurance may fairly be placed in the same category as ordeals and wager of battle.

I have only again to express my hearty approval of the present Bill, and my hope that it may soon be followed by similar Bills for other parts of India."

The Hon'ble Mr. Cowie said that, when he had come to the Council that morning, he had not intended to say a word on the question of the abolition of Grand Juries, because it was not before the Meeting. But as other hon'ble members had spoken on the subject, he felt bound to say—although he regretted to find himself in this matter at variance with most of his mercantile brethren—that for years he had considered a Calcutta Grand Jury an unnecessary and useless institution. He had formed this opinion after many years' experience as a juror, and frequently as a foreman of the Grand Jury. He agreed with Mr. Anderson as to the corresponding inefficiency of the Petty Juries, which seemed composed of persons brought together on no principle, save that of the most ignorant man being entitled to be tried by his peers. In desiring to see the Grand Jury of Calcutta abolished, he earnestly desired the elevation and improvement of the Petty Jury. In regard to the Bill really before the Council, he had no doubt that it would, when passed, prove very useful. The case of Rudd, alluded to by the hon'ble Mover, was quite enough to justify its introduction.

The Motion was put and agreed to.

The following Select Committees were named:—

On the Bill for the improvement of the administration of Civil Justice in respect of Suits of small value.—The Hon'ble Messrs. Harington, Maine, Anderson, Taylor, Muir and Cust.

On the Bill to amend the constitution of the chief Court of Judicature in the Punjab and its Dependencies.—The Hon'ble Messrs. Harington, Maine, Anderson, Bullen, Muir and Cust.

The Council then adjourned.

WHITLEY STOKES,
Offg. Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

CALCUTTA,
The 16th December 1864.

Government Central Press.—No. 525 L. D.—29-4-76.—50.

Abstract of the Proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Friday, the 23rd December 1864.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding*.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble Sir C. E. Trevelyan, K. C. B.
The Hon'ble W. Grey.
The Hon'ble H. L. Anderson.
The Hon'ble J. N. Bullen.
The Hon'ble Mahárájá Vijayaráma Gajapati, Ráj Bahádur of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble W. Muir.
The Hon'ble R. N. Cust.
The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble D. Cowie.

ACTS AND REGULATIONS' EXTENSION BILL.

The Hon'ble Mr. Harington presented the Report of the Select Committee on the Bill to authorize the Governor General of India in Council to extend to the Non-Regulation Provinces under the immediate administration of the Government of India, certain Acts and Regulations not in force in those Provinces.

GOVERNMENT FORESTS' BILL.

The Hon'ble Mr. Maine introduced the Bill to give effect to Rules for the management and preservation of Government Forests, and moved that it be referred to a Select Committee, wiih instructions to report in four weeks. He said that, although this Bill, if passed into law, would bear a bad name—a Forest-Law—he believed it would prove a very innocent measure, and it certainly did not go beyond the exigencies of the case, In the Statement of Objects and Reasons published with the Bill under the 19th Rule for the Conduct of Business, he said that it resulted from the communications addressed to the

Government of Iudia by the newly organized Forest Branch of the Public Works Department, that some of the finest Forests in the world were being rapidly lost to the Government of India and to the public through acts which conduced to the benefit—and sometimes the scarcely appreciable benefit—of an inconceivably small minority of the population. The exact words of Dr. Brandis, the Inspector General of Forests, were as follows .—

"If we take a review of the present impoverished state of a large proportion of the Forests in British India, we come to the conclusion that certain main causes have co-operated to reduce them to their present unproductive condition.

"Indiscriminate felling and reckless mutilation of trees, the lopping of branches for fodder and litter, the wholesale cutting of young trees for fences and roofing, have contributed much and still contribute, to prevent the improvement of the Forests, and many tracts have been entirely denuded, especially in the more arid parts of the country. The effect of this kind of injury is felt principally in districts where Forests are interspersed with villages and cultivation, or where the facilities for export have created a demand for timber and other Forest produce. The unrestricted collection of leaves, the extraction of varnish, wood-oil, and various gums and resins, has been another source of extensive injury to the Forests.

"Another cause of deterioration and destruction of Forests is the practice of temporary and shifting cultivation by clearing and burning the jungle, which is general in almost all hilly districts of India and Burmah. In the Madras Presidency alone, where it is known as Kumari cultivation, has this destructive practice been entirely stopped. The injury done to the Forests is manifold. Besides the destruction by cutting and burning on the spot where the clearing was made, the neighbouring Forest is injured by the spread of the fire. The temporary character, however, of this cultivation is the principal source of evil. The spot cleared and burnt this year is deserted after yielding only one harvest, and thus a new portion of the Forest is every year doomed to destruction.

"A large proportion of the finest Teak Forests in Burmah has, since the British occupation of the country, been rendered valueless by these hill clearings. On the slopes of the Himálaya, miles and miles of splendid Forest may be seen completely destroyed by the fire of the cultivator, and in the Central Provinces extensive tracts have been denuded to such an extent by Dhya cultivation, that they do not now produce any thing but a scanty and low scrub.

"Independently of this destructive practice of clearing and burning, the jungle fires, which every year pervade the greater portion of the Forests in this country, do great harm. The origin of these fires may sometimes be traced to accidental circumstances; they are frequently caused by the erratic hill clearings just mentioned, or by the practice of herdsmen to set fire to the jungle during the hot season in order to produce a fresh crop of young and tender grass. These jungle fires are most mischievous. They destroy annually an immense quantity of timber felled and lying in the Forests; a portion of the young trees and saplings is killed by them, and another portion is so injured as to produce unsound and hollow stems.

"Cattle in the Forests do much injury to seedlings and young trees, but the far greater injury is done by the camp fires of shepherds and herdsmen, and by their systematic practice of firing the jungle during the dry season."

The Bill proposed to prevent all this destruction by enabling the Local Governments to make rules on specified points connected with the conservation of Forests, and breach of those rules would be punished by fine and imprisonment. The only objection he had been able to conceive to the Bill would consist in the allegation that many of the acts at which it pointed were punishable under the Penal Code. In addition to the arguments with which he had attempted to meet that objection in his Statement of Objects and Reasons, he would urge that in order to bring most of those acts under the Penal Code, it would be necessary to show criminal intention, or circumstances from which criminal intention could be inferred. Now almost all these acts were done under conditions which rendered it impossible to ascertain the intention of the perpetrator. Indeed, the probability was that most of them were merely careless acts, or acts innocent in themselves, which only became blameable from the formidable consequences which they entailed—consequences out of all proportion to the advantages derived by the person committing them. He had cited in the paper in his hand certain laws which he conceived to bear some resemblance to the present Bill. On reflection, however, he was inclined to think that the truest analogy was, not between the measure now submitted and the laws he had named, or between that measure and the Forest-Laws of Continental Europe (which were, in the main, stringent game-laws), but between this Bill and certain Acts of Parliament which had recently been forced on the British Legislature by the waste of other products of nature. He would instance the Statutes passed during the last year or two to preserve the Fisheries of Scotland and Ireland, which were being rapidily destroyed by reckless fishing. Let the Council glance at 25 and 26 Vic., cap 27 (the Scotch Salmon Fisheries Act). There was a resemblance between the present Bill and that Statute which was somewhat curious, considering that the one was drafted without any reference to the other. The Commissioners of Fisheries were by the British Statute empowered to make bye-laws, just as the Local Governments would by this Bill be empowered to make rules; and breach of those bye-laws was made punishable by imprisonment and fine. Under Section 11 of the Statute many acts in themselves innocent were made heavily punishable—for example, fishing during the close time by any means other than rod and line, or even fishing with a rod and line at a period not sanctioned by the Commissioners—having a net with a mesh in it of a form prohibited by a bye-law—impeding the passage of salmon contrary to any bye-law—having in one's possession unseasonable salmon, and even disturbing any bank or shallow where salmon were accustomed to

spawn—all these acts were made offences and punishable. The chief difference between the Acts was, that the British Act was incomparably more severe. Under Section 18, for one offence a continuing penalty was imposed which might be almost ruinous to the perpetrator. It was necessary to add that the present Bill would not apply to waste-land as it was commonly called—that is, to lands granted by the Secretary of State to individuals in fee simple or at a rent. Nor would any declaration by the Government that a particular tract of land was Forest affect or abridge any private right acquired either by grant or by prescription.

There was no information before the Government to show whether the Act would be acceptable to the Governments of Madras and Bombay. If no such information arrived before the Bill passed through Committee, it would be better to pass it in the convenient form which the Council had recently adopted, that is, with a section exempting Madras and Bombay until it should be extended to those Presidencies by an order of their Governors in Council.

The Motion was put and agreed to.

MARRIAGE ACT AMENDMENT BILL.

The Hon'ble Mr. Anderson applied to His Excellency the President to suspend the Rules for the conduct of business in order to enable him to introduce the Bill to amend Act XXV of 1864 (to provide for the solemnization of marriages in India of persons professing the Christian Religion). He said that, his reason for asking His Excellency to suspend the Rules was, that he had received a communication from a gentleman deputed by the Roman Catholic Clergy of Southern India, from which it appeared that the Christian converts to his Church usually celebrated their marriages after Epiphany; and that it was therefore desirable that the amended Bill should be passed with as little delay as possible.

The President declared the Rules suspended.

The Hon'ble Mr. Anderson then introduced the Bill and said that when he had asked for leave to introduce this Bill, he had stated at some length the circumstances which had rendered necessary an amendment of Act XXV of 1864. He did not propose therefore to detain the Council with any lengthened detail of the provisions of the measure which he had now the honour to submit; he would only briefly state that the object of the Bill was to relieve the members of the Church of Rome resident in India from the operation of certain provisions of Act XXV of 1864, which they regarded as inflicting hardship upon them.

He was happy to say that the Clergy of that Church, with whom he had discussed the present Bill, had expressed their satisfaction with its provisions, and had stated that their objections to the former Act were now removed.

The Bill also extended the operation of Act XXV of 1864 to the territory subject to the Government of the Straits' Settlement, and provided a more comprehensive form of Registry of Marriages than that which was appended to the former Act.

He had the honour to introduce the Bill, and to move that it be referred to a Select Committee with instructions to report in three weeks.

The Motion was put and agreed to.

PARSEES' MARRIAGE AND DIVORCE BILL.

The Hon'ble Mr. Anderson, in moving for leave to introduce a Bill for regulating the Laws as to Marriage and Divorce among Parsees, said—"I have the honour, Sir, to move for leave to introduce a Bill for regulating the Law as to Marriage and Divorce among the Parsees. It may be in the recollection of the Council, that when my hon'ble friend Mr. Maine introduced the first Chapter of the Indian Civil Code, he alluded to the question of whether the Parsees should be included within the operation of the proposed Code. On that occasion I stated that I had been entrusted by the Parsee community with the charge of their Draft Code of Laws relative to inheritance, succession, marriage, and divorce; that I proposed to divide these subjects and submit first to the Council a measure relative to marriage and divorce, and after the Civil Code had been fully considered, to submit another Bill exempting the Parsees from the operation of such parts only of that Code as might be repugnant to their religious feelings and social usages. My hon'ble friend Mr. Maine was so kind as to express his approval of this course; and I have recently had the great satisfaction of receiving an assurance from the President of the Parsee Law Association, that the manner in which I propose to deal with their requirements, has the approbation of the Parsee community. I therefore now proceed to the performance of the duty entrusted to me, by asking for leave to introduce a measure for the regulation of marriage and divorce among the Parsees. This portion of their Code can be dealt with more easily than the part relative to inheritance and succession. On the latter subjects, there is considerable difference of opinion on questions of principle between the Parsees of Bombay and those of the Mofussil, but with respect to marriage and divorce, all Parsees are entirely in accord. I believe also that generally all the authorities, both in England and India, who have considered the subject, have

agreed that, as to marriage and divorce, the Parsees are entitled to separate and immediate legislation. The necessity for such legislation has long been foreseen. I remember to have read a letter on the subject written so long ago as 1843 by Sir E. Perry, then a Puisne Judge of the Supreme Court in Bombay; but the urgency of taking some action was demonstrated in 1856, when Her Majesty's Privy Council decided in the case of *Ardasseer Curseljee* v. *Peerozebhaee*, that the Supreme Court on its ecclesiastical side had no jurisdiction to entertain a suit brought by a Parsee wife against her husband for restitution of conjugal rights, or for maintenance. This decision practically left the Parsees without any tribunal to enforce the duties and obligations arising out of the marriage union, with the exception of those connected with mere property. It is true that they had still the ancient institution of the Panchâyat; but that tribunal, having no power to enforce its awards, had abandoned almost entirely all exertion of its old authority, and had ceased to command respect. Under these circumstances it is, I think, to the credit of the Parsees that, all legal restraint being withdrawn, a greater degree of moral laxity was not introduced. Still, surrounded as they were, and in constant contact, commercial and social, with races practising polygamy, it cannot excite surprise that demoralization to some extent ensued. When the Government of Bombay, on the recommendation of the Government of India, appointed a Commission presided over by a most accomplished scholar and jurist, Sir Joseph Arnould, to investigate the claims of the Parsees to separate legislation, ample evidence was afforded before that Commission, that several cases of bigamy had occurred in the Parsee community. Facts of this kind could not but be regarded with grave apprehension by the higher order of Parsees, zealous of the long traditions of their religious faith and anxious for the social respectability of their race. The Report of the Commission, a most lucid and exhaustive document, induced the Government of Bombay again to urge on the Government of India and on Her Majesty's Secretary of State, the propriety of meeting the urgent wants of the Parsees, by adequate legislation. It is a consequence of the investigation of Sir Joseph Arnould and of his able colleagues that I have the honour to occupy the attention of the Council on the present occasion. The measure which I wish to introduce is based generally upon the usages existing and regarded as binding by the Parsees of Bombay and the Mofussil, and it is adapted to the feelings and requirements of those communities. It prohibits among the Parsees, and subjects to the penalties prescribed by the Penal Code, the offence of bigamy. It defines clearly the grounds for divorce and for judicial separation, and provides an inexpensive and as it were a domestic authority for the determination of such cases. For this purpose it revives and gives a legal sanction to the ancient and salutary institution of the Parsee

Panchâyat, and it guards that institution from abuse and decay, by giving, in certain cases, an appeal from its decisions to Her Majesty's High Court of Judicature.

There are two points to which I wish briefly to advert, as considerable discussion was raised upon them in Bombay. The first is whether the Legislature should explicitly sanction the validity of infants' marriages and betrothals among the Parsees, and whether it should award civil redress or impose criminal penalties for violations of duties and obligations supposed to arise from such contracts.

Sir Joseph Arnould's Commission and the Government of Bombay both consider that the proper course is, not to prohibit such marriages by explicit legislation, but at the same time not to assert and vindicate the obligations arising from such contracts by express provisions.

If disputes regarding these marriages can be amicably arranged, the Legislature should not object; but it cannot be called on to recognise customs which it deems injurious, and which many Parsees deem injurious, which derive no sanction from the religious law of the Parsees, but have been gradually adopted from the Hindús around them.

The other point is, can the Legislature recognize difference of religious belief existing before a Parsee marriage as a valid ground for declaring such marriage null and void, and can it recognize a difference of religious belief occurring after a Parsee marriage, as a valid ground for rendering such marriage voidable? On this point, the proposed Bill will take the view at which the Government of Bombay arrived, that difference of religious belief before marriage cannot be recognised as a valid ground for rendering a Parsee marriage null and void. The Legislature should not interfere with a contract entered into, advisedly, by competent parties. But with respect to a change of religious belief occurring after marriage, the Bill will propose that such marriage be not inherently valid, but voidable at the instance of either party, due provision being made for the future maintenance of the wife.

I have now mentioned as briefly as I could the principal provisions of the Bill which I wish to introduce. I trust that the Council will be willing to grant the relief, for which the Parsees earnestly pray. I will not again dilate on the claims which the Parsees can advance to the indulgent consideration of the Legislature, but I cannot but think there is a curious interest in the reflection that we are about to legislate in respect to one of the most important relations of life, for a race, strangers like ourselves in this land, which has

preserved one of the most ancient forms of religious belief, a race whose High Priest is expressly stated to have entered Jerusalem with the Assyrian conqueror, and whose form of worship was seen in one of the earlier visions of Ezekiel. The influence, under an over-ruling Providence, of the civilization of the Magi upon the civilization of the Jews, is one of the most pregnant questions of historical speculation. Two broad results all scholars will deduce—the entire abandonment of idolatry among the Jewish people, and the more exoteric enunciation of the doctrine of a future state. To such speculations I can of course only for a moment advert. But if a French historian can find traces of the characteristic versatility of his countrymen in the foolish Galatians with whom St. Paul remonstrated, it may be permitted to one coming to this Council from Western India to see, or to fancy that he sees, the commercial honour and independence of the Parsees foreshadowed in the statement of the Father of History, that the fire-worshippers of his time placed indebtedness second in the list of the gravest offences.

I ask the permission of your Excellency and of the Council to introduce a Bill for the regulation of the Law of Marriage and Divorce among the Parsees."

The Motion was put and agreed to.

POWERS OF FINANCIAL COMMISSIONER OF OUDH BILL.

The Hon'ble Mr. Cust asked leave to postpone the motion (which stood last in the List of Buisness) for leave to introduce a Bill for regulating the judicial powers of the Financial Commissioner of Oudh, until the next meeting.

Leave was granted.

The following Select Committees were named :—

On the Bill to give effect to Rules for the management and preservation of Government Forests—The Hon'ble Messrs. Harington, Maine, Anderson and Cowie.

On the Bill to amend Act XXV of 1864 (to provide for the solemnization of Marriages in India of persons professing the Christian Religion)—The Hon'ble Messrs. Harington, Maine, Anderson and Muir.

The Council then adjourned.

WHITLEY STOKES,

Offg. Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

CALCUTTA,
The 23rd December 1864.

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